

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/1. NATURE OF THE REMEDY OF DISTRESS/901. Meaning of distress.

DISTRESS (VOLUME 13 (2007 REISSUE))

1. NATURE OF THE REMEDY OF DISTRESS

901. Meaning of distress.

The term 'distress' primarily connotes a summary remedy by which a person is entitled without legal process to take into his possession the personal chattels of another person, to be held as a pledge to compel the performance of a duty, or the satisfaction of a debt or demand¹. By almost universal sanction the term 'distress' is now used to designate both the process of taking, and the chattels taken², though originally it applied only to the taking.

By statute, remedies referred to as distress³ have been introduced for the recovery of rates⁴ and taxes⁵ and for the enforcement of certain fines imposed by or orders of magistrates' courts⁶. A statutory right to distrain has also been given to a person for the recovery of tithe rentcharge and for the recovery of annual sums charged on land⁷.

Because distress is a remedy to which resort may be made without judicial process (which by its nature involves the taking of property, including that of a third party, and in some instances involves interference with the home) there are doubts whether the law in all instances complies with the Convention for the Protection of Human Rights and Fundamental Freedoms⁸.

1 The following definition is given in Bradby *Law of Distresses* (2nd Edn) 1: 'A distress is the taking of a personal chattel, without legal process, from the possession of a wrongdoer, into the hands of the party grieved; as a pledge, for the redress of an injury, the performance of a duty, or the satisfaction of a demand'. As to pledges see generally PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 1 et seq.

2 3 Bl Com (14th Edn) 6.

3 For the general distinction between statutory distress which is not for rent or rentcharge and distress for rent see PARA 904 post.

4 See PARAS 1104-1126 post.

5 See PARAS 1127-1133 post.

6 See PARAS 1134-1147 post.

7 See the Law of Property Act 1925 s 121(2); the Landlord and Tenant Act 1730 s 5 (as amended) (which enabled rents seek to be recovered by distress and sale in the same manner as rent reserved upon a lease); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 869.

8 I.e. the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969). This is generally beyond the scope of this title but see in particular the Human Rights Act 1998 s 1(3), Sch 1 Pt I arts 6, 8, Pt II art 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 165. See also *Fuller v Happy Shopper Markets Ltd* [2001] 1 WLR 1681, [2001] 2 Lloyd's Rep 49.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/1. NATURE OF THE REMEDY OF DISTRESS/902. The common law remedy.

902. The common law remedy.

The right of the landlord to distrain for arrears of rent arises at common law and need not be expressly reserved¹. It enables the landlord to secure the payment of rent by seizing goods and chattels found upon the premises in respect of which the rent or obligations are due. Distress has been characterised as an archaic remedy².

The common law right of distress was also given in respect of a great number of services in regard to tenure which are now obsolete. Further, the common law right of distress damage feasant which enables a person who has suffered trespass to his land to distrain and impound the thing trespassing has, in relation to trespassing animals, been replaced by statutory provisions³, but the remedy is also available in respect of inanimate things⁴.

When the remedy was exercised, the chattels remained only as a pledge in the hands of the party making the distress, and could not be sold. This continues to be the law with regard to chattels taken by way of distresses where the mode of dealing with the distress has not been altered by Act of Parliament; over such chattels the distrainor has no other power than to retain them until satisfaction is made⁵.

The common law remedy has been modified in a number of ways by statutes which have given a power of sale⁶ and which regulate the goods which may be distrained⁷ and the mode of distress⁸.

1 As to distress for rent see PARA 905 et seq post.

2 See *Abingdon RDC v O'Gorman* [1968] 2 QB 811 at 819, [1968] 3 All ER 79 at 82, CA, per Lord Denning MR.

3 See the Animals Act 1971 s 7; and ANIMALS vol 2 (2008) PARAS 758, 761.

4 See *Ambergate, Nottingham and Boston and Eastern Junction Rly Co v Midland Rly Co* (1853) 2 E & B 793; *Easton Estate and Mining Co v Western Waggon and Property Co* (1886) 54 LT 735, DC (railway engine); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 192. See also *Arthur v Anker* [1997] QB 564 at 581, [1996] 3 All ER 783 at 796, CA, Hirst LJ (dissenting) (not available to entitle landowner to demand fee for release of car clamped on private land in absence of proof of damage).

5 3 Bl Com (14th Edn) 10.

6 See PARA 1044 et seq post.

7 See PARA 928 et seq post.

8 See PARA 992 et seq post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/1. NATURE OF THE REMEDY OF DISTRESS/903. Express power to distrain.

903. Express power to distrain.

Subject to the provisions by which an instrument giving a power of distress may be void unless registered as a bill of sale¹, a power may be conferred, by express agreement between the parties, to distrain for payments which are not rent, and in cases where the common law requisites are absent². A common example was the right reserved in an instrument creating a rentcharge; but in that case a statutory right is now given to distrain for arrears³. Under an express power of distress only the goods of the person giving the power can, as a rule, be taken⁴.

An instrument giving a power of distress as security for any present or future debt is, as a rule, deemed to be a bill of sale, and unless registered as regards the chattels seized under the power, is void as regards such chattels⁵. An express power of distress for rent under a lease is not within these provisions⁶ nor, it appears, is an express power of distress given to secure the payment of a rentcharge as the instalments of the rentcharge seem not to be debts for this purpose⁷.

A power of distress given by way of indemnity against a rent⁸ or any part of a rent payable in respect of any land, or against the breach of any covenant or condition relating to land is not a bill of sale⁹.

1 See the text to note 5 *infra*. As to the exception in favour of mining leases and the application of the provisions in other particular cases see note 5 *infra*. As to the power of distress given by way of indemnity against a rent etc see the text and notes 8-9 *infra*.

2 See eg *Pollitt v Forrest* (1847) 11 QB 949 at 961. As to what are the common law requisites in the case of rent see PARAS 907-912 *post*.

3 See PARA 901 text and note 7 *ante*.

4 *Freeman v Edwards* (1848) 2 Exch 732; *Gibbs v Cruikshank* (1873) LR 8 CP 454; *Re Willis, ex p Kennedy* (1888) 21 QBD 384 at 395, CA, per Lindley LJ.

5 See the enactments cited in para 916 note 1 *post*; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1648, 1652, 1824. Mining leases are expressly excluded from the instruments affected: see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1653; and cf para 980 note 2 *post*. As to distress by agreement on goods or land other than that out of which the rent issues see PARA 980 *post*. As to the effect of the provisions stated in the text on attornment clauses or express authority to distrain in mortgages see PARA 916 *post*; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1655. As to the effect of the provisions on a brewer's lease giving power to distrain for goods supplied see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1653.

6 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1648, 1653.

7 Cf *Re Blackburn and District Benefit Building Society, ex p Graham* (1889) 42 ChD 343 at 346-347, CA, per Lord Esher MR.

8 'Rent' includes a rent service or a rentcharge or other rent, toll duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land but does not include mortgage interest: Law of Property Act 1925 s 205(1)(xxiii).

9 See *ibid* s 189(1); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1654.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/1. NATURE OF THE REMEDY OF DISTRESS/904. The statutory remedies.

904. The statutory remedies.

The right to distrain for unpaid rates and council tax¹ or taxes² or under the summary jurisdiction of magistrates³ are more analogous to execution than to the common law right of a landlord to distrain for rent⁴. Statutory rules governing the process of levying distress for rent⁵ are not applicable to distress for rates and council tax or for taxes or under the summary jurisdiction. Common law and statutory provisions regarding the things on which distraint for rent may be made⁶ do not apply to the other kinds of distress mentioned above⁷.

With regard to the right to distrain upon the goods of strangers, different principles apply in relation to the various kinds of distress⁸.

1 See PARA 1104 et seq post.

2 See PARAS 1127-1133 post.

3 See PARAS 1134-1147 post.

4 The principle was fully discussed in *Potts v Hickman* [1941] AC 212, [1940] 4 All ER 491, HL. See also *Hutchins v Chambers* (1758) 1 Burr 579; *McCreagh v Cox and Ford* (1923) 92 LJB 855; *Swaffer v Mulcahy* [1934] 1 KB 608. The statutory remedies by distress are not, however, 'execution' within the Landlord and Tenant Act 1709 s 1 (as amended) (see PARA 1032 post), so as to entitle a landlord to claim payment in priority for arrears of rent: *Potts v Hickman* supra. As to execution generally see CIVIL PROCEDURE vol 12 (2009) PARA 1265 et seq.

5 Ie the Distress for Rent Rules 1988, SI 1988/2050 (as amended): see PARA 994 et seq post. These rules replace the Distress for Rent Rules 1953, SI 1953/1702 (revoked) which were made under the Law of Distress Amendment Act 1888 s 8 (as amended) and the Law of Distress Amendment Act 1895 s 3: see PARA 994 post. See also *Walker v Retter* [1911] 1 KB 1103 at 1109 per Lord Alverstone CJ.

6 See PARA 928 et seq post.

7 *Hutchins v Chambers* (1758) 1 Burr 579 (distress for rates; working tools); *McCreagh v Cox and Ford* (1923) 92 LJB 855 (distress for rates: animals on land); *MacGregor v Clamp & Son* [1914] 1 KB 288, DC (distress for tax: implements of trade).

8 As to goods of strangers in relation to distress for rent see PARAS 950-961 post; as to distress for rates and council tax see PARA 1104 et seq post; as to distress for taxes see PARAS 1127-1133 post; and as to distress under the Magistrates' Courts Act 1980 see PARAS 1134-1147 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(1) REMEDY BY DISTRESS/905. Distress in relation to different kinds of rent: historical background.

2. DISTRESS FOR RENT

(1) REMEDY BY DISTRESS

905. Distress in relation to different kinds of rent: historical background.

The distress with which this part of this title is chiefly concerned is distress as between landlord and tenant for arrears of rent certain in money reserved under a lease, or payable under a tenancy agreement where the tenant has possession of the land. There are, however, three kinds of rent: namely rent service, rentcharge and rent seck¹.

A rent service is a rent reserved on a lease or grant of lands as incidental to their tenure² and this was the only kind of rent originally known to the common law. A right of distress was inseparably incident to it, as long as it was payable to the lord who was entitled to the fealty of the tenant. It was called rent service because the ancient retribution was made by the corporal service of the tenant in ploughing his lord's demesnes, which came afterwards to be changed into gabel or rent; but the service of fealty remained incident to a rent service³.

A rentcharge is an annual sum issuing out of land (but not as an incident of the tenure) the due payment of which is secured by a right of distress⁴. At common law the right to distrain had normally to be expressly reserved but there is now statutory provision for distress⁵.

A rent seck is a bare rent for which formerly no distress could be made⁶. Such a rent arose when a rent was granted or reserved out of land otherwise than as an incident of tenure and no express power of distress was granted or reserved⁷. Moreover a rent service might be converted into a rent seck if it became separated from the seignior or reversion to which it was incident, for example where the lord alienated the rent without conveying the seignior or reversion or on a conveyance of the seignior reserved to himself the rent⁸.

1 Littleton's Tenures s 213; and see PARA 903 note 8 ante. As to rent see generally LANDLORD AND TENANT. As to sums, sometimes called rent, for which distress cannot be levied see PARA 909 post.

2 Littleton describes a rent service to be where the tenant holds his land by fealty and certain rent, or by homage, fealty and certain rent, or by other services and certain rent: see Littleton's Tenures s 213.

3 Bac Abr, Rent (A) 1; Co Litt 87b, 142b; Cru Dig, Rents, c 1, s 5. As to the abolition of fealty on enfranchisement under the Law of Property Act 1922 see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 643.

4 See generally RENTCHARGES AND ANNUITIES. As to tithe rentcharges and corn rents see ECCLESIASTICAL LAW. As to distress for certain compensation rentcharges payable in respect of enfranchised copyholds see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 723.

5 See PARA 901 note 7 ante; and see generally RENTCHARGES AND ANNUITIES.

6 Littleton's Tenures ss 217-218. A power of distress was later given by statute: see the Landlord and Tenant Act 1730 s 5 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 753.

7 Littleton's Tenures ss 217-218. Such a rent seck only differed from a rentcharge in the fact that it was not accompanied by a clause of distress: 2 Bl Com (14th Edn) 42. Power of distress was, however, extended to rent seck by the Landlord and Tenant Act 1730 s 5 (as amended): see PARA 901 note 7 ante; and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 753.

8 Littleton's Tenures ss 225-228.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(1) REMEDY BY DISTRESS/906. Distress as between landlord and tenant.

906. Distress as between landlord and tenant.

The common law right of distress for rent in arrear is a right for the landlord to seize whatever movables he finds on the premises out of which the rent or service issues, and to hold them until the rent is paid or the service performed¹.

By statute, in all cases of rent upon any demise, the distrainor may sell the distress unless replevied within five days².

1 *Lyons v Elliott* (1876) 1 QBD 210 at 213 per Blackburn J.

2 See the Distress for Rent Act 1689 s 1 (as amended); and PARA 1011 post. As to sale of distress see PARAS 1044-1057 post. As to replevin see PARA 1081 et seq post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(2) THE RIGHT TO DISTRAIN/907. Requisites to distress.

(2) THE RIGHT TO DISTRAIN

907. Requisites to distress.

In order that the right to distrain for rent upon a demise may arise, the relation of landlord and tenant must exist, both when the rent becomes due and when the distress is levied, and the rent must be in arrear¹. This short proposition involves a number of circumstances (commonly referred to as the essentials to the right of distress) which are dealt with in the following paragraphs².

1 *Jolly v Arbutnot* (1859) 4 De G & J 224 at 242 per Lord Chelmsford.

2 See PARAS 908-912 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(2) THE RIGHT TO DISTRAIN/908. An existing demise.

908. An existing demise.

An actual existing demise is necessary; the common law right to distrain for rent does not arise before the relationship of landlord and tenant is complete¹, nor (apart from the Landlord and Tenant Act 1709²) continue after it has determined³. A formal instrument of tenancy is not necessary; possession taken by the tenant under an agreement for a tenancy which can be specifically enforced gives the landlord the right to distrain⁴. Further, provided there is a demise, the nature or duration of the tenancy is immaterial, it may be a tenancy at will⁵ or a weekly tenancy⁶. The right of distress also exists where, after the expiration of a previous tenancy, a tenant by the consent of both parties continues in possession under such circumstances as to warrant the inference that there is a tacit renewal of the contract of tenancy, but there must be facts to warrant the inference of a renewal of the tenancy⁷. The landlord cannot distrain after treating the tenant as a trespasser by bringing a claim for recovery of land⁸. A tenancy at sufferance, which is not created by demise, does not authorise a distress, the only remedy being by claim for use and occupation⁹.

If the relationship between the parties is not that of landlord and tenant but merely that of licensor and licensee, payment made for the use of the premises is not rent and no right to distrain is conferred on the licensor¹⁰.

1 *Dunk v Hunter* (1822) 5 B & Ald 322.

2 See the Landlord and Tenant Act 1709 s 6 (as amended); and PARA 965 post.

3 *Williams v Stiven* (1846) 9 QB 14.

4 *Walsh v Lonsdale* (1882) 21 ChD 9, CA.

5 *Anderson v Midland Rly Co* (1861) 3 E & E 614; *Morton v Woods* (1869) LR 4 QB 293, Ex Ch.

6 *Yeoman v Ellison* (1867) LR 2 CP 681.

7 See *Right d Flower v Darby and Bristow* (1786) 1 Term Rep 159; *Dougal v McCarthy* [1893] 1 QB 736, CA.

8 *Bridges v Smyth* (1829) 5 Bing 410. As to the loss of the right to distrain see PARAS 968-978 post.

9 *Alford v Vickery* (1842) Car & M 280; *Jenner v Clegg* (1832) 1 Mood & R 213.

10 *Hancock v Austin* (1863) 14 CBNS 634 (right to 'standings' for machines in factory); *Rendell v Roman* (1893) 9 TLR 192, DC (stall at exhibition to be used between certain hours); and see also *Provincial Bill Posting Co v Low Moor Iron Co* [1909] 2 KB 344, CA. As to the distinction between lease and licence see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 7 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(2) THE RIGHT TO DISTRAIN/909. Rent for which distress may be made.

909. Rent for which distress may be made.

The landlord's right to distrain is founded on the principle that the rent reserved by his demise issues out of the land and he distrains by taking possession, in the nature of a pledge, of goods and chattels found upon such land. In distraining, therefore, the landlord looks to the land demised and to the goods and chattels found on it¹. Rent for which a distress may be made must be rent reserved out of lands and tenements upon which entry can be made for the purpose of seizing goods found there; and, therefore, rent for which distress may be made cannot be reserved out of any incorporeal hereditament².

Sums reserved for the use of chattels confer no right of distress, but when chattels are let with houses or land at one entire rent, the payment issues out of the land and is rent, and may be distrained for³.

Payments provided for by parol agreement during the currency of a demise by way of increased rent or percentage on the outlay for additions or improvements to be made by the landlord on the premises though expressly called rent, have been held not in fact to be rent, but sums in gross for which a distress cannot be levied⁴. Where, however, the tenancy is one which can be varied by parol, or where the variation is by deed, it is possible to create additional rent in the strict technical sense without a surrender of the old tenancy explicitly or by operation of law and a new lease⁵. A reservation in the demise itself of an increased rent equal to a percentage on the landlord's outlay is good and will support a distress⁶.

It has been held that where the lease has been assigned, an assignee of the term will not be liable to distress for rent due prior to the assignment of the term to him and owed by the assignor⁷.

1 *British Mutoscope and Biograph Co Ltd v Homer* [1901] 1 Ch 671 at 674 per Farwell J.

2 Co Litt 47a; *Capel v Buszard* (1829) 6 Bing 150 at 161-162, Ex Ch.

3 *Newman v Anderton* (1806) 2 Bos & PNR 224. See also *Selby v Greaves* (1868) LR 3 CP 594 at 602; *Marshall v Schofield* (1882) 52 LQB 58, CA (premises let with power).

4 *Hoby v Roebuck* (1816) 7 Taunt 157; *Donellan v Read* (1832) 3 B & Ad 899; *Lambert v Norris* (1837) 2 M & W 333. These, however, were pre-Judicature Act cases of parol agreements where it was clearly not the intention of the parties that the benefit of the existing lease should be replaced by an insecure parol holding. See also *Smith v Mapleback* (1786) 1 Term Rep 441 (the lessor agreed with the assignee of the lease that the lessor should lease the demised premises and should pay an annual sum towards the goodwill already paid for by the assignee; it was held that the assignee could not distrain for the annual sum).

5 *Gable Construction Co Ltd v IRC* [1968] 2 All ER 968 at 971-973, [1968] 1 WLR 1426 at 1432-1434 per Goff J (distinguishing *Donellan v Read* (1832) 3 B & Ad 899). Goff J's judgment was approved in *Jenkin R Lewis & Son Ltd v Kerman* [1971] Ch 477 at 497-498, [1970] 3 All ER 414 at 421, CA, per Russell LJ. As to the power to vary a lease under seal by an agreement in writing or an oral agreement see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 59.

6 *Re Knight, ex p Voisey* (1882) 21 ChD 442 at 456, CA, per Jessel MR.

7 *Wharfland Ltd v South London Co-operative Building Co Ltd* [1995] 2 EGLR 21; and cf *Whitham v Bullock* [1939] 2 KB 81 at 86, CA, per Clauson LJ. See also *Parry v Robinson-Wyllie Ltd* (1987) 54 P & CR 187, [1987] 2 EGLR 133. See also LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 108, 278.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(2) THE RIGHT TO DISTRAIN/910. Rent must be certain.

910. Rent must be certain.

Unless a tenant is to pay a rent certain, the landlord has no right to distrain¹. To attract the remedy of distress, rent must be certain at the time that it falls due. If that which is agreed upon as the payment is uncertain, it is not rent. A rent is certain, however, if it becomes certain by calculation and upon the happening of certain events, and the mere fact of rent fluctuating from year to year, for example because it is based on the number of acres in crops², does not make it uncertain³. The necessary certainty may be implied from the acts and dealings of the parties⁴. Rent is sufficiently certain if it can be calculated with certainty at the time when payment comes to be made⁵.

1 *Regnart v Porter* (1831) 7 Bing 451 at 454 per Alderson J; and see *Townsend v Charlton* [1922] 1 KB 700, DC. See also *United Scientific Holdings Ltd v Burnley Borough Council* [1978] AC 904 at 935, [1977] 2 All ER 62 at 76, HL, per Lord Diplock; *Concorde Graphics Ltd v Andromeda Investments SA* [1983] 1 EGLR 53, (1982) 265 Estates Gazette 386; *Eren v Tranmac Ltd* [1997] 2 EGLR 211, CA. See PARA 982 post.

2 *Re Knight, ex p Voisey* (1882) 21 ChD 442, CA (mortgage; attornment clause). See also *Smith v Cardiff Corp'n (No 2)* [1955] Ch 159 at 173, [1955] 1 All ER 113 at 120 per Danckwerts J, citing also, as an example of the reservation of a fluctuating rent, *A-G for Ontario v Canadian Niagara Power Co* [1912] AC 852, PC; cf *Re Stockton Iron Furnace Co* (1879) 10 ChD 335, CA (mortgage to secure current account, and including an attornment clause). A stipulation that the rent should be the damage which the landlord might suffer by certain defaults of the tenant, so that it would have to be ascertained at large or by a tribunal, would be a stipulation for an uncertain payment, which could not be rent: *Re Knight, ex p Voisey* supra at 458 per Brett LJ.

3 Thus a distress may be levied for a rent of so much per cubic yard for marl got and so much per thousand for bricks made (*Daniel v Gracie* (1844) 6 QB 145), or of so much per annum for each loom which the lessee may run (*Walsh v Lonsdale* (1882) 21 ChD 9, CA). See also *Selby v Greaves* (1868) LR 3 CP 594 at 602 per Willes J. As to the amount for which distress may be made see PARAS 981-991 post.

4 *Knight v Bennett* (1826) 3 Bing 364 (rent not stipulated for in agreement but paid for two years).

5 *Greater London Council v Connolly* [1970] 2 QB 100 at 108, [1970] 1 All ER 870 at 874, CA, per Lord Denning MR.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(2) THE RIGHT TO DISTRAIN/911. Rent must be in arrear.

911. Rent must be in arrear.

Distress cannot be made until the rent is in arrear. It is not in arrear until after the last moment of the day on which it is made payable, and therefore there can be no distress until the day after the rent becomes due¹. If days of grace are given, distress cannot be levied until they have expired²; and if payment is postponed by statute the right to distrain is suspended³.

Rent payable in advance, either by reservation⁴ or by custom⁵, may be distrained for on the day following that fixed for payment, unless the rent is expressed to be payable in advance if required, in which case a demand for payment must be made before a distress⁶; but in the latter case the demand may be made after the day on which the rent thereby reserved becomes due⁷; and the landlord may distrain immediately after demand, if his rights are in peril⁸. When an express power of distress is given to be exercised after the rent has been 'lawfully demanded', it has been held that it is not necessary to follow the strict common law rules as to demand⁹.

Where a tenant has a valid claim against the landlord entitling the tenant to a legal or equitable set-off against the rent, the rent is not due and in arrear. Accordingly, the landlord in such circumstances has no right to distrain¹⁰.

1 *Dibble v Bowater* (1853) 2 E & B 564. As to when distress may be made see PARAS 962-967 post.

2 *Clun's Case* (1613) 10 Co Rep 127a; and see *Child v Edwards* [1909] 2 KB 753.

3 *Aquis Property Co v Hollebone* as reported in (1914) 59 Sol Jo 102 (a decision under the Postponement of Payments Act 1914 (repealed)); and see *Shottland v Cabins Ltd* (1915) 31 TLR 297 (a case where a distress was levied before the date of proclamation of a moratorium under the Postponement of Payments Act 1914, but the goods had not been sold).

4 *Lee v Smith* (1854) 9 Exch 662; *Harrison v Barry* (1819) 7 Price 690; *Walsh v Lonsdale* (1882) 21 ChD 9, CA.

5 *Buckley v Taylor* (1788) 2 Term Rep 600.

6 *Clarke v Holford* (1848) 2 Car & Kir 540; and see *Mallam v Arden* (1833) 10 Bing 299 (rent payable quarterly or half quarterly if required). For other cases in which a demand is necessary see PARA 964 post.

7 *Witty v Williams* (1864) 12 WR 755.

8 *London and Westminster Loan and Discount Co v London and North Western Ry Co* [1893] 2 QB 49.

9 *Thorp v Hurt* [1886] WN 96. As to demand in relation to forfeiture for non-payment of rent see eg *Jackson & Co v Northampton Street Tramways Co* (1886) 55 LT 91; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 609.

10 See *Eller v Grovecrest Investments Ltd* [1995] QB 272, [1994] 4 All ER 845, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(2) THE RIGHT TO DISTRAIN/912. Necessity for existence of a reversion.

912. Necessity for existence of a reversion.

Unless otherwise provided by statute or by agreement between the parties, the person distraining for rent under a demise must at the time the distress is made possess a reversion to which the rent is incident¹, though it is immaterial how short that reversion may be. Thus a tenant who underlets for the remainder of his term less a day has a sufficient reversion to entitle him to distrain². Apart from statute, the reversion must have been vested in the person distraining at the time the rent distrained for fell due, but it was not necessary that he should have been the reversioner for all the time during which the rent was accruing³.

A defeasible reversion, until it is defeated, is sufficient to support a distress. So a tenant from year to year, whose estate consists in point of law of a lease for a year certain with a growing interest during every year thereafter springing out of the original contract⁴, has a sufficient reversion to support a distress under a demise; and it is immaterial whether he simply underlets from year to year⁵ or grants a lease for a long term⁶.

A reversion by estoppel will also support a distress⁷, though in such a case the goods of a third party cannot be taken⁸.

Rent reserved on an assignment cannot be distrained for as there is no reversion⁹. When a leaseholder, whether purporting to assign or underlet, parts with all his interest in a term of years, he cannot distrain for rent due on the underlease, unless he reserves to himself an express power to do so¹⁰. When he purports to demise for a period coextensive with his own interest or longer, reserving a rent, the transaction is in law an assignment, although purporting to be a demise; for an underlease for the whole of the residue of a term is in law an assignment¹¹. It makes no difference that the instrument contains a stipulation that the assignee is to be tenant to the assignor during the term¹², or that the assignee has paid or agreed to pay money as rent¹³, but the claim for rent may remain¹⁴. Since the right to distrain may only be exercised by a person entitled to the reversion, it does not pass to an original tenant or surety who discharges arrears of rent on behalf of an assignee of the lease albeit that the original tenant or surety has a right to bring a claim against the assignee by subrogation¹⁵.

1 Co Litt 47a, 142b. As to a lessor losing his right of distress by parting with the reversion see PARA 968 post.

2 *Wade v Marsh* (1625) Lat 211.

3 *Thompson v Shaw* (1836) 5 LJCP 234. As to the statutory rights of executors and administrators to levy distress see PARA 923 post. As to the rights of assignees see PARA 968 post.

4 *Oxley v James* (1844) 13 M & W 209 at 214 per Parke B; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 208.

5 *Curtis v Wheeler* (1830) Mood & M 493; *Pike v Eyre* (1829) 9 B & C 909.

6 *Oxley v James* (1844) 13 M & W 209. A demise by such a person for a term of years is not an assignment; it is a term for so many years subject to determination by the cessation of the original interest: *Oxley v James* supra. The principle applies to other periodic tenancies: *Peirse v Sharr and Claughton* (1828) 2 Man & Ry KB 418.

7 As to tenancies by estoppel see ESTOPPEL vol 16(2) (Reissue) PARA 1030 et seq; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 4. As to estoppel in the case of a mortgage see PARA 916 text and note 6 post. As to estoppel in the case of a receiver appointed out of court see PARA 925 note 4 post.

8 *Tadman v Henman* [1893] 2 QB 168.

9 See the text and notes 10-15 infra; and PARA 968 post.

10 *Preece v Corrie* (1828) 5 Bing 24 (oral tenancy of the last year of a term); *Lewis v Baker* [1905] 1 Ch 46. As to the position when the reversion has been mortgaged see PARAS 917-918 post.

11 *Lewis v Baker* [1905] 1 Ch 46 at 50 per Swinfen Eady J; --v *Cooper* (1768) 2 Wils 375; *Preece v Corrie* (1828) 5 Bing 24; and see *Beardman v Wilson* (1868) LR 4 CP 57; *Milmo v Carreras* [1946] KB 306, [1946] 1 All ER 288, CA; *Grosvenor Estate Belgravia v Cochran* (1991) 24 HLR 98, [1991] 2 EGLR 83, CA. It would appear that the sum reserved as rent is not an annual sum receivable out of the land or the income thereof so as to enable it to be recovered by distress under the Law of Property Act 1925 s 121(2) (see PARA 901 note 7 ante; and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 869): see *Lewis v Baker* supra at 52 per Swinfen Eady J.

12 *Parmenter v Webber* (1818) 8 Taunt 593. As to the protection of new leases on termination of existing terms see the Ecclesiastical Leasing Act 1842 ss 16, 17 (both as amended); the Law of Property Act 1925 ss 139, 150; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 638.

13 *Hazeldine v Heaton* (1883) Cab & El 40.

14 See *Poulthney v Holmes* (1720) 1 Stra 405; *Pollock v Stacy* (1847) 9 QB 1033.

15 *Re Russell, Russell v Shoolbred* (1885) 29 ChD 254, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/913. Who may distrain for rent.

(3) WHO MAY DISTRAIN

913. Who may distrain for rent.

Any person, in whom is vested the reversion incident to a term of years¹, may, by virtue of the common law, distrain for rent due. The right of distress ceases when the reversion or the whole of the estate is parted with², but the right has by statute and otherwise been extended to certain persons who may not have a reversionary interest in the ordinary sense of the term³.

1 See Littleton's Tenures ss 214-215. See also *Manchester Brewery Co v Coombs*[1901] 2 Ch 608 at 617-618 per Farwell J ('distress is a legal remedy and depends on the existence at law of the relation of landlord and tenant'). As to the effect (for purposes of distress, forfeiture etc) of the execution of a transfer and notice to a lessee without actual registration of the transfer see *Scribes West Ltd v Relsa Anstalt*[2004] EWCA Civ 1744, [2005] All ER 690, [2005] 1 WLR 1847.

As to distress by the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 847.

2 See PARAS 912 ante, 968 post.

3 See PARAS 924-925 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/914. Tenants in fee or for years.

914. Tenants in fee or for years.

The only legal estates in land now capable of subsisting are a fee simple absolute in possession and a term of years absolute¹. Consequently it is to these estates, and to these estates only, that a power of distress for rent service is incident². Tenants for terms of years, who sublet and retain even a day's reversion, can distrain; as also can a tenant from year to year who sublets from year to year or for a term of years³. A termor (that is, a tenant for a term of years), whose term has expired, cannot, however, distrain on an undertenant, if the undertenant has declined further to recognise the termor as his landlord⁴.

1 Law of Property Act 1925 s 1(1); and see REAL PROPERTY vol 39(2) (Reissue) PARA 45.

2 Where there are equitable interests, the legal estate will normally be vested in trustees (see REAL PROPERTY vol 39(2) (Reissue) PARA 46; SETTLEMENTS vol 42 (Reissue) PARA 609) and by virtue of their legal estate they will be able to distrain.

3 See PARA 912 text and notes 5-6 ante.

4 *Burne v Richardson* (1813) 4 Taunt 720.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/915. Joint tenants.

915. Joint tenants.

One of several joint tenants¹ may distrain for the whole rent due. No express authority is needed from the others for this purpose, and the discharge given binds all the co-tenants. It is doubtful whether such authority can be actually countermanded by the others; merely declining to authorise the distress does not prevent its legality². If joint tenants make a demise to one of their number the other joint tenants may justify a distress³.

1 *Pullen v Palmer* (1696) 3 Salk 207.

2 *Robinson v Hofman* (1828) 4 Bing 562; *Leigh v Shepherd* (1821) 2 Brod & Bing 465.

3 *Cowper v Fletcher* (1865) 6 B & S 464. Formerly, where a reversion was held in joint tenancy, severance of the reversion effected by a conveyance by some of the joint tenants deprived the remaining joint tenants of their right to distrain for rent already due (*Stavelly v Allcock* (1851) 16 QB 636); but there cannot now be a severance of a joint tenancy of a legal estate (see the Law of Property Act 1925 s 36(2); and REAL PROPERTY vol 39(2) (Reissue) PARA 198).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/916. Mortgagees: attornment in mortgage.

916. Mortgagees: attornment in mortgage.

Attornment clauses in mortgages are invalid for the purpose of conferring effective powers of distress over personal chattels unless registered as bills of sale, but the invalidity does not extend to cases where the mortgagee has actually entered into possession and has demised the land to the mortgagor at a fair and reasonable rent¹. The mere relationship of mortgagee and mortgagor gives no right to distrain², but the relationship of landlord and tenant involving (subject to the Bills of Sale Acts 1878 and 1882³) that right⁴ may be created between them by express words of attornment or by conduct⁵; and for this purpose the mortgagor may be estopped from setting up the want of the legal estate in the mortgagee even though that is shown on the face of the mortgage deed⁶. Where the existence of the relationship of landlord and tenant rests on the estoppel of the mortgagor, it seems that any right of the mortgagee to distrain could never have extended to the goods of a third party⁷. A tenancy at will arising from an attornment clause determines on the death of the mortgagor, and subsequent payment of interest by his successor in title will not of itself, in the absence of other evidence that the sums paid were paid as rent, be referred to a new tenancy so as to justify a distress thereunder⁸.

1 See the Bills of Sale Act 1878 s 6; the Bills of Sale Act (1878) Amendment Act 1882 s 8; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1655, 1754. As to attornment clauses see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1655; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 3; MORTGAGE vol 77 (2010) PARAS 228, 343.

2 *Evans v Elliot* (1838) 9 Ad & El 342 at 354; *Rogers v Humphreys* (1835) 4 Ad & El 299.

3 See note 1 *supra*.

4 As to the right of a landlord to distrain: see *Pinhorn v Souster* (1853) 8 Exch 763 (distress on goods of person other than the mortgagor); *Re Stockton Iron Furnace Co* (1879) 10 ChD 335, CA (mortgage to bankers; attornment at annual rent; entry by mortgagee and distress for arrears); *Re Threlfall, ex p Queen's Benefit Building Society* (1880) 16 ChD 274, CA (attornment as tenant from year to year; distress for half-year's rent); *Kearsley v Philips* (1883) 11 QBD 621, CA (attornment by mortgagor; distress on goods of stranger). The right to distrain on the goods of a stranger is now subject to the Law of Distress Amendment Act 1908: see PARA 950 *et seq post*.

5 *Clowes v Hughes* (1870) LR 5 Exch 160; *Jolly v Arbuthnot* (1859) 4 De G & J 224; *Kearsley v Philips* (1883) 11 QBD 621, CA; *West v Fritche* (1848) 3 Exch 216. A personal licence granted by the mortgagor to the mortgagee to seize goods in default of payment of interest does not involve a tenancy so as to give a right to distrain on the goods of a tenant of the mortgagor: *Gibbs v Cruikshank* (1873) LR 8 CP 454; and see *Kearsley v Philips* (1883) 11 QBD 621 at 624-625, CA, *per Brett MR*.

6 *Morton v Woods* (1869) LR 4 QB 293, Ex Ch; *Re Kitchen, ex p Punnett* (1880) 16 ChD 226, CA (second mortgage); and see also PARA 925 note 4 *post*. A second mortgagee by demise, however, would have a legal estate. A legal mortgage of land (whether it is a first or subsequent mortgage) is now effected by demise or by a charge by way of legal mortgage which confers on the mortgagee the same remedies as if it were a mortgage by demise: see the Law of Property Act 1925 ss 39, ss 85-87 (all as amended), Sch 1 Pts I, VII, VIII; and see MORTGAGE vol 77 (2010) PARA 187 *et seq*. As regards tenancy by estoppel see generally ESTOPPEL.

7 *Tadman v Henman* [1893] 2 QB 168.

8 *Scobie v Collins* [1895] 1 QB 375.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/917. Mortgage subsequent to lease.

917. Mortgage subsequent to lease.

In the case of a mortgage of land subsequent to a lease, the mortgagee, where the mortgage is by demise¹, becomes reversioner on the lease² and has the same rights against the lessee and those claiming under him as the mortgagor had³. In the case of a mortgage created by a charge expressed to be by way of legal mortgage, the mortgagee has the same powers as if he had a term, including the like right to distrain where the land was subject to a lease at the date of the mortgage⁴. The lessee, however, must continue to pay rent to the mortgagor⁵ unless he receives notice from the mortgagee of his intention to take possession or to enter into receipt of the rents and profits of the mortgaged land. After receiving the notice the lessee must pay rent to the mortgagee, who can distrain if necessary, even if the lessee after notice has paid the mortgagor⁶. Payment by the lessee before knowledge of the mortgage is protected, but the payment must be strictly in accordance with the terms of the lease, and cannot apply to rent paid in advance of the due date; the rent in such a case would be considered an advance to the landlord⁷. The notice necessary should be by the grantee of the mortgage, but notice by a beneficiary of the trust instead of by trustees is sufficient⁸.

1 As to the methods by which a mortgage of a legal estate in land can be effected see PARA 916 note 6 ante.

2 See eg *Harmer v Bean* (1853) 3 Car & Kir 307; *Re Moore and Hulm's Contract* [1912] 2 Ch 105 at 109. As to the general effect of concurrent leases see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 104 et seq. See also MORTGAGE vol 77 (2010) PARA 293. The mortgagor while in possession can distrain: see PARA 921 post. As to the right to recover arrears of rent due when the reversion is assigned see PARA 968 post.

3 See the Law of Property Act 1925 s 141; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 567. No attornment by the tenant to the mortgagee is necessary: s 151(1).

4 See *ibid* s 87 (as amended); and MORTGAGE vol 77 (2010) PARA 191.

5 See PARA 921 post.

6 *Moss v Gallimore* (1779) 1 Doug KB 279, confirmed in *Birch v Wright* (1786) 1 Term Rep 378 at 384; *Rogers v Humphreys* (1835) 4 Ad & El 299; *Davies v Law Mutual Building Society* (1971) 219 Estates Gazette 309, DC.

7 *De Nicholls v Saunders* (1870) LR 5 CP 589.

8 *Lumley v Hodgson* (1812) 16 East 99.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/918. Lease subsequent to mortgage.

918. Lease subsequent to mortgage.

A lease by a mortgagor subsequent to the mortgage, unless made under an express power given by the mortgage¹ or under the statutory power², is void as against the mortgagee, who cannot distrain, as there is no relation of landlord and tenant between him and the lessee³. Such a relationship, however, may arise by express agreement or by conduct⁴, but it does not relate back to notice of the mortgage⁵. An express attornment may relate back⁶. The question whether a new tenancy between the mortgagee and the tenant has been created is one of fact; mere failure by the mortgagee to evict the tenant is insufficient⁷; mere notice of the mortgage deed and of the interest being in arrear accompanied by a demand for rent is not sufficient, but the fact that rent is paid in accordance with such notice is evidence of a tenancy⁸. The notice is the offer, and evidence of acceptance of or assent to the offer is necessary⁹.

Even though a lease made after the mortgage by the mortgagor is not made under an express power or the statutory power there is, as between the mortgagor and the tenant, a tenancy which will entitle the mortgagor to distrain unless the mortgagee has given notice of his intention to enter into possession¹⁰.

¹ *Rogers v Humphreys* (1835) 4 Ad & El 299.

² Under the Law of Property Act 1925 s 99 (as amended) (see MORTGAGE vol 77 (2010) PARAS 345-350): see PARA 919 post.

³ *Keech v Hall* (1778) 1 Doug KB 21; *Pope v Biggs* (1829) 9 B & C 245; *Rogers v Humphreys* (1835) 4 Ad & El 299; *Partington v Woodcock* (1835) 6 Ad & El 690. See also *Dudley and District Benefit Building Society v Emerson* [1949] Ch 707, [1949] 2 All ER 252, CA; *Rust v Goodale* [1957] Ch 33, [1956] 3 All ER 373; *Britannia Building Society v Earl* [1990] 2 All ER 469, [1990] 1 WLR 422, CA; and see further FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2032; MORTGAGE vol 77 (2010) PARA 296.

⁴ *Doe d Whitaker v Hales* (1831) 2 Bing 322; *Evans v Elliot* (1838) 9 Ad & El 342 at 355; *Iron Trades Employers Insurance Association Ltd v Union Land and House Investors Ltd* as reported in [1937] Ch 313 at 318; *Parker v Braithwaite* [1952] 2 All ER 837 at 840-841 per Danckwerts J; *Barclays Bank Ltd v Kiley* [1961] 2 All ER 849, [1961] 1 WLR 1050.

⁵ See the comments of Denman CJ in *Evans v Elliot* (1838) 9 Ad & El 342 at 353-354, explaining the dicta in *Pope v Biggs* (1829) 9 B & C 245.

⁶ *Gladman v Plumer* (1845) 15 LJQB 79.

⁷ *Parker v Braithwaite* [1952] 2 All ER 837.

⁸ *Evans v Elliot* (1838) 9 Ad & El 342; *Partington v Woodcock* (1835) 6 Ad & El 690; *Towerson v Jackson* [1891] 2 QB 484, CA.

⁹ *Towerson v Jackson* [1891] 2 QB 484 at 487, CA, per Bowen LJ (criticising *Brown v Storey* (1840) 1 Man & G 117). See also *Corbett v Plowden* (1884) 25 ChD 678 at 681, CA, per Lord Selborne LC (evidence might be given of the mortgagees being in substance parties to and authorising the agreement, and that it was made by the mortgagor for them as well as for himself). As to tenancies arising by implication see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 199 et seq.

¹⁰ See PARA 921 post. The tenancy in this case is, it seems, a tenancy by estoppel: see eg *Cuthbertson v Irving* (1860) 6 H & N 135, Ex Ch; and MORTGAGE vol 77 (2010) PARA 296.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/919. Lease by mortgagor under statute.

919. Lease by mortgagor under statute.

If a mortgagor makes a lease complying with the provisions of the Law of Property Act 1925¹, it will be good against the mortgagee, and is treated as if made with his authority and concurrence. The mortgagor is entitled to distrain while in possession, and the mortgagee by virtue of his mortgage term has a reversionary estate expectant on the end of the lease, and he can distrain after he has given notice that he intends to exercise his rights to act as lessor under the terms of the lease². Collateral agreements between the mortgagor and the tenant do not bind the mortgagee³.

1 See the Law of Property Act 1925 s 99 (as amended) (replacing the Conveyancing Act 1881 s 18); and MORTGAGE vol 77 (2010) PARAS 345-350. A mortgagor, if he is in possession and no receiver by the mortgagee is acting, may lease the mortgaged property provided that certain provisions as to the contents etc of the lease are fulfilled: see the Law of Property Act 1925 s 99 (as amended); and MORTGAGE vol 77 (2010) PARA 347. Except where the land to be leased is agricultural land subject to the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995 or the lease is under an order of the court for the grant of a new business tenancy, the Law of Property Act 1925 s 99 (as amended) applies only if and so far as a contrary intention is not expressed in the mortgage deed or otherwise in writing: see s 99(13) (as amended), s 99(13A) (as added); the Landlord and Tenant Act 1954 s 36(4); and MORTGAGE vol 77 (2010) PARA 347.

2 *Municipal Permanent Investment Building Society v Smith* (1888) 22 QBD 70, CA. See also *Wilson v Queen's Club* [1891] 3 Ch 522.

3 *Municipal Permanent Investment Building Society v Smith* (1888) 22 QBD 70, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/920. Mortgagee in possession.

920. Mortgagee in possession.

No obligation lies on a mortgagee in possession to distrain, nor can he be called upon to do so by the owner of an equity of redemption, nor is he bound, on a distraint, to continue and defend at law any seizure he may have made¹.

¹ *Cocks v Gray* (1857) 1 Giff 77.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/921. Mortgagor in possession.

921. Mortgagor in possession.

Where the mortgagee has not given notice of his intention to take possession or enter into the receipts of the rents and profits of any land, a mortgagor for the time being entitled to the possession or receipt of the rents and profits of such land is entitled to distrain for rent accrued due since the date of the mortgage, whether the lease be prior¹ or subsequent to the mortgage². In these circumstances, the mortgagor is not liable to account for the rents to the mortgagee³. The mortgagor cannot distrain after the mortgagee has appointed a receiver under his powers in that behalf⁴.

1 At common law the mortgagor in receipt of the rents and profits of the land could distrain for them as bailiff of the mortgagee: see *Trent v Hunt* (1853) 9 Exch 14; approved in *Snell v Finch* (1863) 13 CBNS 651. See also *Dean and Chapter of Christchurch, Oxford v Duke of Buckingham and Chandos* (1864) 17 CBNS 391 at 413 per Willes J; *Reece v Strousberg* (1885) 54 LT 133. See also the Law of Property Act 1925 ss 98, 141; *Rose v Watson* (1864) 10 HL Cas 672 at 684; *Turner v Walsh* [1909] 2 KB 484, CA; *Re Ind, Coope & Co Ltd, Fisher v Ind, Coope & Co Ltd* [1911] 2 Ch 223 at 231-232 per Warrington J; and MORTGAGE vol 77 (2010) PARAS 338, 423. See also *Rhodes v Allied Dunbar Pension Services Ltd* [1989] 1 All ER 1161 at 1166-1167, [1989] 1 WLR 800 at 807, CA, per Nicholls LJ.

2 *Carpenter v Parker* (1857) 3 CBNS 206 at 234, 237; *Trent v Hunt* (1853) 9 Exch 14 at 23.

3 *Ex p Wilson* (1813) 2 Ves & B 252; *Trent v Hunt* (1853) 9 Exch 14.

4 See PARA 925 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/922. Beneficiary of trust.

922. Beneficiary of trust.

Where the reversion on a demise is held in trust the beneficiary of the trust is not entitled to distrain for rent in arrear since he is entitled not to the rent but only to an account from the trustee of the profits received from the trust property¹. In order to distrain, one must be entitled to the legal reversion². Although it has been held that an equitable assignee of the reversion to a lease who has not been registered as legal owner is entitled to the benefit of a condition in the lease entitling the landlord to forfeit, it has not been directly decided that a person without a legal estate is entitled to exercise the legal remedy of distress³.

1 *Schalit v Joseph Nadler Ltd* [1933] 2 KB 79, construing the Law of Property Act 1925 s 141(2) (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 567). See also *Scribes West Ltd v Relsa Anstalt (No 3)* [2004] EWCA Civ 1744, [2005] 2 All ER 690.

2 See PARAS 912, 914 ante.

3 See *Scribes West Ltd v Relsa Anstalt (No 3)* [2004] EWCA Civ 1744, [2005] 2 All ER 690.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/923. Executors and administrators.

923. Executors and administrators.

When the reversion incident on the legal estate is vested in him, a personal representative can distrain for all rent accruing due to him after the testator's death¹. An executor can distrain before probate. Administrators, however, in spite of the doctrine of the relating back of the letters of administration to the date of death, cannot distrain before the grant². A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living³. Such arrears may be distrained for after the termination of the lease or tenancy as if the lease had not determined, if the distress is made within six months after the determination of the lease or tenancy, and during the continuation of the possession of the lessee or tenant from whom the arrears are due⁴.

1 Bac Abr, Distress (A). As to personal representatives generally see EXECUTORS AND ADMINISTRATORS.

2 *Whitehead v Taylor* (1839) 10 Ad & El 210; *Woolley v Clark* (1822) 5 B & Ald 744. The probate refers back to the testator's death: *R v Horsley Inhabitants* (1807) 8 East 405 at 410 per Lord Ellenborough CJ. See EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 30, 453.

3 Administration of Estates Act 1925 s 26(4). The statutory enactments relating to distress for rent apply to any distress so made: s 26(4).

4 Ibid s 26(4).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/924. Receivers appointed by the court.

924. Receivers appointed by the court.

A receiver appointed by the court may distrain for rent where necessary without the sanction of the court¹. However, the receiver must distrain in the name of the person entitled to rent, and if there is any doubt upon the point he should apply to the court for its sanction to distrain². When there has been no letting by the receiver and no attornment to him, the distraint should be in the name not of the receiver, but of the person beneficially entitled³. If the person beneficially entitled is not ascertained, or the receiver is unable to obtain information as to the amount of rent in arrear, an application to the court is necessary in any case⁴.

The distraint should, however, be made in the name of the receiver if either the letting has been in his own name⁵ or the tenant has attorned to him⁶, for in either case the tenant is estopped from questioning his landlord's title, even though it may appear on the face of the documents that he is a mere receiver without any legal reversion to which a right of distress could attach⁷. Not only is the receiver the proper person to distrain, but he alone can distrain in such cases⁸.

A receiver may employ a bailiff to distrain, though he may not delegate his authority generally⁹.

A receiver has no power to distrain against an owner-occupier unless the latter has been constituted a tenant of the receiver¹⁰.

1 *Mitchel v Duke of Manchester* (1750) 2 Dick 787; *Pitt v Snowden* (1752) 3 Atk 750; *Brandon v Brandon* (1821) 5 Madd 473; *Bennett v Robins* (1832) 5 C & P 379; *Ward v Shew* (1833) 9 Bing 608. See also *Swaby v Dickon* (1833) 5 Sim 629; *Re Powers, Manisty v Archdale* (1890) 63 LT 626. For the position of a receiver appointed on behalf of a mortgagee of leaseholds who sells goods on which the lessor might have distrained see COMPANIES vol 15 (2009) PARA 1370.

2 See *Brandon v Brandon* (1821) 5 Madd 473.

3 *Shelly v Pelham* (1747) 1 Dick 120; *Pitt v Snowden* (1752) 3 Atk 750; *Brandon v Brandon* (1821) 5 Madd 473; and see *Justice v James* (1899) 15 TLR 181 at 182, CA, per Chitty LJ. Where a bailiff is employed to distrain (see the text to note 9 infra; and PARAS 1011-1012 post) the name of the person beneficially entitled should, it seems, be stated in the notice of distress as well as that of the receiver: see the Distress for Rent Rules 1988, SI 1988/2050, r 12(2), App 2 Form 7; and cf *Croghan v Maffett* (1890) 26 LR Ir 664.

4 *Pitt v Snowden* (1752) 3 Atk 750; cf *Mills v Fry* (1815) 19 Ves 277.

5 *Dancer v Hastings* (1826) 12 Moore CP 34.

6 *Raincock v Simpson* (1764) 1 Dick 120n; *Hughes v Hughes* (1790) 1 Ves 161; *Evans v Mathias* (1857) 7 E & B 590; and see RECEIVERS vol 39(2) (Reissue) PARA 410.

7 See PARA 925 note 4 post.

8 *Evans v Mathias* (1857) 7 E & B 590; *Bayly v Went* (1884) 51 LT 764; *Woolston v Ross* [1900] 1 Ch 788.

9 *Birch v Oldis* (1837) Sau & Sc 146; and see note 3 supra. As to bailiffs see PARA 992 et seq post.

10 *Griffith v Griffith* (1751) 2 Ves Sen 400.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/925. Receiver appointed out of court.

925. Receiver appointed out of court.

A receiver appointed out of court or an agent has no power, by virtue of his appointment, to distrain, nor does an authority to tenants 'to pay rent to an agent whose receipt shall be their discharge' confer this right¹. A power to distrain on behalf of the principal might be given, for example, by a formal power of attorney². The agent would, however, have to justify in the principal's name³. A receiver can be appointed either in a mortgage deed or by a separate instrument with a power of distress under an attornment by the mortgagor, although the instrument on its face discloses the absence of any reversion in the receiver⁴.

A receiver appointed by a mortgagee under the Law of Property Act 1925⁵ has a statutory power of distress in the name of the mortgagor or of the mortgagee⁶. After the appointment of a receiver the mortgagor cannot himself distrain as long as the receivership is in force, even if the receiver has been negligent in collecting the rents, or has himself declined to distrain or allow the mortgagor to distrain personally, for two parties cannot have a concurrent right to distrain for the same arrears of rent⁷. The receiver's power to distrain is destroyed if the mortgagor's interest is determined, for example if the mortgagor's interest is leasehold and the lessor forfeits the lease⁸.

1 *Ward v Shew* (1833) 9 Bing 608. See also *Woolston v Ross* [1900] 1 Ch 788 at 790; and cf *Doe d Mann v Walters* (1830) 10 B & C 626 (where the question was whether a person who acted as receiver of rents was entitled to give notice to quit).

2 *Eagleton v Gutteridge* (1843) 11 M & W 465.

3 *Trent v Hunt* (1853) 9 Exch 14.

4 *Jolly v Arbuthnot* (1859) 4 De G & J 224. Lord Chelmsford LC in this case left it doubtful if attornment to a receiver (without a formal power of distress) created an estoppel, when the absence of the reversion was apparent in his title. See also *Dancer v Hastings* (1826) 4 Bing 2; and the cases cited in para 916 note 6 ante.

5 See the Law of Property Act 1925 s 101(1)(iii), (4); and MORTGAGE vol 77 (2010) PARA 476.

6 See *ibid* s 109(3); and MORTGAGE vol 77 (2010) PARA 481.

7 See *Bayly v Went* (1884) 51 LT 764; *Woolston v Ross* [1900] 1 Ch 788.

8 *Serjeant v Nash, Field & Co* [1903] 2 KB 304, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/926. Corporations.

926. Corporations.

Corporations sole can distrain according to the nature of their estates¹. Corporations aggregate also have power of distress at common law, whilst by statute their rights are extended to the recovery of rents seck², and as persons they are entitled to the benefit of the statutory remedy by distress for the recovery of annual sums charged on land³. Corporations distrain by a bailiff, whose appointment may be by writing⁴. An officer of a corporation (such as the director of a company) distraining can only justify as bailiff, and not otherwise⁵.

1 See Bullen *Law of Distress for Rent* (2nd Edn) 84. See also CORPORATIONS.

2 Landlord and Tenant Act 1730 s 5 (as amended); and see PARA 901 note 7 ante; and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 753. Section 5 (as amended) also applied in relation to chief rents and rents of assize (also known as quit rents), which were extinguished by the Law of Property Act 1922 s 138 (repealed); see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 722. As to the nature of a rent seck see PARA 905 ante.

3 See the Law of Property Act 1925 s 121(2); para 901 text and note 7 ante; and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 753. 'Person' includes a body of persons corporate or unincorporate, subject to any expression of contrary intention in the instrument creating the charge: Interpretation Act 1978 s 5, Sch 1.

4 Bac Abr, Corporations (E) 3; and see *Cary v Matthews* (1688) 1 Salk 191n; *Smith v Birmingham Gas Co* (1834) 1 Ad & El 526. See also PARA 992 text to note 4 post.

5 *Hogarth v Jennings* [1892] 1 QB 907, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(3) WHO MAY DISTRAIN/927. Sequestrators of benefices.

927. Sequestrators of benefices.

Sequestrators of any ecclesiastical benefice can levy a distress in the same way as the incumbent might have done had the benefice not been under sequestration¹.

¹ See the Sequestration Act 1849 s 1 (as amended); and ECCLESIASTICAL LAW vol 14 para 915. As to the sequestration of benefices generally see ECCLESIASTICAL LAW.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(i) General Rule/928. Prima facie all goods may be distrained.

(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED

(i) General Rule

928. Prima facie all goods may be distrained.

Under the common law a landlord can prima facie seize and distrain for rent in arrear all goods and chattels found on the premises out of which the rent issues; the goods and chattels may be the property of the tenant, or of a stranger, the landlord being entitled to have recourse to all chattels actually on his tenant's premises without reference to their ownership¹. The rule, however, applies only to goods and personal chattels, while chattels of an incorporeal nature and incorporeal hereditaments, such as advowsons, rights of common, fairs, tithes, markets, privileges, franchises, and patent rights, are incapable of physical possession and seizure, and cannot be the subject of distress, although any actual goods the subject of these rights may be taken².

Moreover, in the case of personal chattels certain exceptions have been grafted upon the general rule both by the common law and by statute³. These exceptions depend in part on the person in whose possession, or the place in which, the goods may be found, and in part on the nature of the goods themselves. Anyone claiming the benefit of one of these exceptions must satisfy the court that his case falls within it. The exceptions are stated in the form of rules and not of principles, and the court will not travel beyond the definitions of the exceptions prescribed⁴. Of these exceptions some are absolute and some are conditional, that is the goods within them can only be taken if there is no other sufficient distress⁵. It does not matter in whose possession the demised land may be⁶.

1 3 Bl Com (14th Edn) 8; *Gorton v Falkner* (1792) 4 Term Rep 565; *Gilman v Elton* (1821) 3 Brod & Bing 75; *Muspratt v Gregory* (1838) 3 M & W 677, Ex Ch; *Cramer v Mott* (1870) LR 5 QB 357 at 360 per Blackburn J; *Lyons v Elliott* (1876) 1 QBD 210; *Clarke v Millwall Dock Co* (1886) 17 QBD 494, CA; *Challoner v Robinson* [1908] 1 Ch 49, CA. 'The rule grows out of the relation of landlord and tenant and out of the nature of the thing itself': *Gilman v Elton* supra at 79 per Dallas CJ; and see *Lyons v Elliott* supra at 213 per Blackburn J. As to the goods of strangers see PARA 950 et seq post; and as to goods comprised in a bill of sale see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1807.

2 Co Litt 47a; *British Mutoscope and Biograph Co Ltd v Homer* [1901] 1 Ch 671 (chattels subject of patent seized; infringing use restrained); and cf *Horsford v Webster* (1835) 1 Cr M & R 696.

3 As to the exceptions see PARA 930 et seq post.

4 See the authorities cited in note 1 supra. See also *Simpson v Hartopp* (1744) Willes 512 (where the leading common law exceptions are precisely stated). Other exceptions are stated by Alderson B in *Muspratt v Gregory* (1836) 1 M & W 633 at 645; affd (1838) 3 M & W 677, Ex Ch. See also *Clarke v Millwall Dock Co* (1886) 17 QBD 494 at 497, CA, per Lord Herschell LC, and at 601 per Lord Esher MR; *Challoner v Robinson* [1908] 1 Ch 49 at 59, CA, per Cozens-Hardy MR (citing *Clarke v Millwall Dock Co* supra at 899 per Lord Herschell LC, that both the general rule of distraint on strangers' goods and the exception in question were anomalous).

5 For absolute exceptions see PARAS 930-947 post; and for conditional exceptions see PARA 948 et seq post.

6 *Humphry v Damion* (1612) Cro Jac 300; *Groom v Bluck* (1841) 2 Man & G 567 (goods of assignor of lease left on premises and seized for rent due by assignee); but see *Re Potter, ex p Parke* (1874) LR 18 Eq 381 (tenants in common attorning as tenants).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(i) General Rule/929. Crops.

929. Crops.

At common law growing crops could not be distrained¹, but by statute the landlord may seize, for arrears of rent, all sorts of corn and grass, hops, roots, fruit, pulse or other product whatsoever² growing on any part of the land demised³. The grantee of a rentcharge is not a landlord for these purposes⁴, and it would seem that this statutory power⁵ would not authorise a distress of growing crops.

At common law sheaves or cocks of corn were not distrainable⁶, but by statute sheaves or cocks of corn, or corn loose or in the straw, or hay lying in any barn or granary or upon any hovel stack or rick, may be seized and may be detained in the place where it is found, until it is replevied, and in default of replevy until it is sold; it must not, however, be removed to the damage of the owner until replevied or sold⁷. In default of replevy it must be sold within five days unless this time is extended⁸. This provision applies to corn thrashed or unthrashed⁹. The owner of a rentcharge may take advantage of the provision¹⁰, even if the goods are those of a stranger¹¹.

Statutory restrictions on the right to distrain on crops now exist in relation to agricultural holdings¹².

1 1 Roll Abr, Distress (H); Co Litt 47b (note 299 of Hargrave). As to distress for rent of agricultural holdings see AGRICULTURAL LAND vol 1 (2008) PARAS 346-348.

2 'Other product' does not include trees or shrubs in a nursery ground: *Clark v Gaskarth* (1818) 8 Taunt 431; *Clark v Calvert* (1818) 8 Taunt 742.

3 See the Distress for Rent Act 1737 s 8 (as amended), s 9; and PARA 1014 post.

4 *Miller v Green* (1831) 8 Bing 92, Ex Ch.

5 See under the Law of Property Act 1925 and the Landlord and Tenant Act 1730: see PARA 901 text and note 7 ante.

6 Co Litt 47a; *Wilson v Duckett* (1675) 2 Mod Rep 61; *Griffin v Scott* (1726) 1 Barn KB 3; *Simpson v Hartopp* (1744) Willes 512 at 515.

7 See the Distress for Rent Act 1689 s 2 (amended by the Statute Law Revision Act 1948). As to impounding see PARA 1013 et seq post. As to sale see PARAS 1044, 1050, 1053 post. As to replevin see PARA 1081 et seq post. As to the effect of payment or tender see PARA 975 post. As to appraisalment see PARA 1019 post. As to distress after execution see PARA 1043 post.

8 See PARAS 1044, 1050 post.

9 *Belasyse v Burbridge* (1696) 1 Lut 213 at 214.

10 *Johnson v Faulkner* (1842) 2 QB 925. See also *Horton v Arnold* (1731) Fortes Rep 361.

11 *Johnson v Faulkner* (1842) 2 QB 925.

12 See the Agricultural Holdings Act 1986 s 17; and AGRICULTURAL LAND vol 1 (2008) PARA 346.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/930. Crown property; property of diplomats etc.

(ii) Things Absolutely Privileged

930. Crown property; property of diplomats etc.

The property of the Crown, whether in the possession of the Crown or on premises demised to a subject, cannot be taken in distress¹.

The premises of a diplomatic mission are inviolable, as is the private residence of a diplomatic agent, and such an agent is in general immune from suit and legal process². Provision is made for the granting of corresponding immunities and privileges to international organisations and persons connected with them³.

1 *Secretary of State for War v Wynne* [1905] 2 KB 845. Nothing in the Law of Property Act 1925 affects this proposition: s 208(1). A postal packet, anything contained in such a packet and a mailbag containing such a packet have, if they are not the property of the Crown but are in the course of transmission by post, the same immunity from seizure under any statutory power or under distress as if they were Crown property: see the Postal Services Act 2000 s 104(1)-(3). As to the inviolability of mails generally see POST OFFICE vol 36(2) (Reissue) PARA 90.

2 See the Diplomatic Privileges Act 1964 s 2 (as amended), Sch 1 arts 22, 30, 31; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq. As to the privileges and immunities of families, members of staffs etc see Sch 1 art 37; the State Immunity Act 1978; the Diplomatic and Consular Premises Act 1987; and INTERNATIONAL RELATIONS LAW.

3 See the International Organisations Act 1968 ss 1, 2, 6, Sch 1 (all as amended); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 307 et seq. As to the immunities and privileges of Commonwealth representatives and organisations see COMMONWEALTH vol 13 (2009) PARA 723 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/931. Goods in custody of the law.

931. Goods in custody of the law.

Goods in custody of the law, when seized by virtue of an execution¹, are immune from distress.

¹ See PARA 1032 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/932. Trade privilege.

932. Trade privilege.

Things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of his trade, are privileged from distress for rent due from the person in whose custody they are; examples of such things are a horse in a smith's shop, materials sent to a weaver, or cloth sent to a tailor to be made up¹. There are various statements as to the scope² and object³ of this exception. This branch of privilege has lost most of its former importance owing to the statutory protection given to the goods of strangers⁴.

Delivery for the purposes of trade is essential, and the exception stated above does not extend to all cases in which goods happen to be on premises for those purposes, although if an article to be manufactured has been completed, and the person who has the property in it leaves it upon the demised premises to have some alteration made, there may be an equivalent to delivery of the thing manufactured⁵.

1 *Simpson v Hartopp* (1744) Willes 512, 1 Smith LC (13th Edn) 494; *Gisbourn v Hurst* (1710) 1 Salk 249. For examples of goods privileged see PARA 936 post. See also BAILMENT vol 3(1) (2005 Reissue) PARA 47.

2 See *Clarke v Millwall Dock Co* (1886) 17 QBD 494 at 499-500, CA, cited with approval in *Challoner v Robinson* [1908] 1 Ch 49 at 59, CA. See also *Muspratt v Gregory* (1838) 3 M & W 677, Ex Ch; *Joule v Jackson* (1841) 7 M & W 450 (where it is laid down that this rule ought not to be extended). However, in *Adams v Grane* (1833) 1 Cr & M 380 at 391 per Vaughan B, it was suggested that the rule should not be construed strictly; while in *Findon v M'Laren* (1845) 6 QB 891 at 897 per Patteson J, it was stated that the principles of this exception have been varied according to the state of trade.

3 The exception has been said to be for the sake of 'trade and commerce, which could not be carried on if such things in these circumstances could be distrained for rent': *Simpson v Hartopp* (1744) Willes 512, 1 Smith LC (13th Edn) 494. See *Miles v Furber* (1873) LR 8 QB 77 at 83 per Archibald J, where it is stated that the principle is that 'the trade or business could not be carried on, except the goods were privileged from distress'. According to Dallas CJ in *Gilman v Elton* (1821) 3 Brod & Bing 75, this exception is for the public benefit and convenience; Denman CJ in *Musprat v Gregory* (1838) 3 M & W 677 at 679, Ex Ch, adds 'for public peace'; in *Adams v Grane* (1833) 1 Cr & M 380 at 387, Bayley B says 'interest reipublicae that buyer and seller should be brought together'; and Blackburn J in *Lyons v Elliott* (1876) 1 QBD 210 at 214 states that the ground is 'public policy for the benefit of trade'.

4 See PARA 950 et seq post.

5 *Clarke v Millwall Dock Co* (1886) 17 QBD 494, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/933. Trade privilege: trade must be public.

933. Trade privilege: trade must be public.

For the goods of a third party in the hands of a trader to be privileged from distress for rent¹ the trade must be a public one, that is a trade or business carried on generally for the benefit of all persons who chose to avail themselves of it, as distinguished from a special employment by particular individuals. The term 'public' is not confined to cases such as those of an innkeeper or common carrier, where all persons have a right to deal with the trader, but includes a trader *prima facie* open to the dealings of all persons indiscriminately, such as a butcher or trader in corn. The quantity of trade is no criterion, and a workman employed for wages may be carrying on a public trade within the meaning of the exception² previously stated³.

The trade is not public if carried on substantially on behalf of one employer only or in one particular case. Thus an agent who, although entitled to carry on other agency business, holds only one agency beyond that of his regular principals⁴, and an artist who has been entrusted with a picture to work up⁵ are not carrying on a public trade. Pictures deposited for sale on commission with a restaurant keeper who is not a commission agent are not privileged⁶.

1 See PARA 932 text and note 1 ante.

2 See note 1 *supra*.

3 See *Challoner v Robinson* [1908] 1 Ch 49 at 56, CA, per Neville J; *Brown v Shevill* (1834) 2 Ad & El 138; *Gibson v Ireson* (1842) 3 QB 39; *Muspratt v Gregory* (1836) 1 M & W 633 at 652 et seq (on appeal (1838) 3 M & W 677, Ex Ch). In pleading the exception as a defence, the publicity of the trade must be pleaded: see *Farrant v Robson* (1834) 3 LJCP 146.

4 *Tapling & Co v Weston* (1883) Cab & El 99.

5 *Von Knoop v Moss and Jameson* (1891) 7 TLR 500.

6 *Edwards v Fox & Son* (1896) 60 JP Jo 404, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/934. Goods must be in trader's possession.

934. Goods must be in trader's possession.

The trade in question, as well as being a public trade¹, must be carried on on premises either regularly or temporarily occupied by the trader, and must not be on premises occupied by the owner of the goods. Goods sent to an auctioneer to be sold on premises temporarily hired for the auction are privileged², while those to be sold on the owner's premises are not³. The goods may be deposited by the trader in a public warehouse or store kept for depositing goods without losing the privilege⁴. They must, however, be in the trader's possession for the actual purpose of his trade. The privilege was held not to extend to boats brought to salt works (where salt was publicly sold) and left in cuts or canals to be loaded with the salt sold⁵; nor does the privilege extend to machinery delivered with materials for the exercise of the trade (although the tools of trade are conditionally privileged⁶), or to the implements of storage or conveyance⁷.

1 See PARA 933 ante.

2 *Brown v Arundell* (1850) 10 CB 54. See also *Adams v Grane* (1833) 1 Cr & M 380; and *Williams v Holmes* (1853) 8 Exch 861.

3 *Lyons v Elliott* (1876) 1 QBD 210. See also AUCTION vol 2(3) (Reissue) PARA 231.

4 *Matthias v Mesnard* (1826) 2 C & P 353; *Farrant v Robson* (1834) 3 LJCP 146.

5 *Muspratt v Gregory* (1838) 3 M & W 677, Ex Ch.

6 *Wood v Clarke* (1831) 1 Cr & J 484; and see PARA 949 post.

7 *Joule v Jackson* (1841) 7 M & W 450 (brewers' casks sent to a publican with beer to remain on the premises until the beer was consumed); *Muspratt v Gregory* (1838) 3 M & W 677, Ex Ch.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/935. Trade privilege: exercise of trade on goods.

935. Trade privilege: exercise of trade on goods.

The goods must be put into the trader's hands so that he may exercise his trade upon them. Work and skill need not be bestowed upon the goods sent, if the trade in question does not involve such work and skill, and mere storage, whether for sale or otherwise, is enough if the storage or sale constitutes the trade in question, but goods sent to a trader who merely stores them instead of exercising his regular trade upon them are not exempt from distress¹. The word 'managed' in the exception previously stated² must be taken in a wide sense so as to include, if not to be equivalent to, 'disposed of'³. Sample articles sent to an agent for exhibition purposes only are not privileged⁴.

1 Eg wine in cask or bottle deposited for storage in a wine-warehouseman's cellar is not, whereas wine sent to be bottled is, privileged: *Re Russell, ex p Russell*, (1870) 18 WR 753. The question in these cases is whether the goods are placed in the hands of the tenant merely with the intent that they are to remain upon the premises or with the view of having labour and skill bestowed upon them: *Parsons v Gingell* (1847) 4 CB 545 at 558 per Wilde CJ. However, this dictum is dissented from in *Miles v Furber* (1873) LR 8 QB 77.

2 See PARA 632 ante.

3 *Challoner v Robinson* [1908] 1 Ch 49, CA.

4 *Simms Manufacturing Co v Whitehead* [1909] WN 95. See also AGENCY vol 1 (2008) PARA 149.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/936. Examples of goods subject to trade privilege.

936. Examples of goods subject to trade privilege.

Examples of goods held to be privileged¹ are: cloth left at a clothworker's to be woven and while waiting to be weighed at a neighbouring house²; cattle pastured for one night on the way to market³; goods in the hands of a carrier for the purpose of carriage⁴; goods sent to a factor for sale⁵, or deposited by a factor at a wharfinger's warehouse⁶, and goods sent to a wharfinger direct⁷; corn sent to a factor for sale and deposited by him in the warehouse of a granary keeper⁸; goods sent to a commission agent to be exposed for sale or sold⁹; carcasses of beasts which had been sent to a butcher to be slaughtered¹⁰; goods pledged with a pawnbroker for money advanced¹¹; and furniture sent to a depository to be warehoused for hire¹². Horses and carriages standing at livery have been held distrainable¹³.

Where goods are privileged from distress, the instruments or vehicles used for their conveyance are equally privileged¹⁴.

1 le privileged from distress for rent: see PARA 932 ante.

2 *Read v Burley* (1597) Cro Eliz 549, 596.

3 *Tate v Glead* (1784) 2 Wms Saund 290a, note (q); *Nugent v Kirwan* (1838) 1 Jebb & S 97.

4 *Gisbourn v Hurst* (1710) 1 Salk 249.

5 *Gilman v Elton* (1821) 3 Brod & Bing 75.

6 *Thompson v Mashiter* (1823) 1 Bing 283.

7 *Thompson v Mashiter* (1823) 1 Bing 283 at 285 per Dallas CJ.

8 *Matthias v Mesnard* (1826) 2 C & P 353.

9 *Findon v M'Laren* (1845) 6 QB 891.

10 *Brown v Shevill* (1834) 2 Ad & El 138.

11 *Swire v Leach* (1865) 18 CBNS 479.

12 *Miles v Furber* (1873) LR 8 QB 77.

13 *Francis v Wyatt* (1764) 3 Burr 1498; *Parsons v Gingell* (1847) 4 CB 545. As to this latter case see, however, *Miles v Furber* (1873) LR 8 QB 77. A landlord can distrain horses in a stable let by a tenant to an innkeeper during races: see *Crosier v Tomkinson* (1759) 2 Keny 439.

14 *Muspratt v Gregory* (1836) 1 M & W 633 at 647 (on appeal (1838) 3 M & W 677, Ex Ch); *Wood v Clarke* (1831) 1 Cr & J 484 at 498.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/937. Fixtures.

937. Fixtures.

Whatever is part of, or annexed or affixed to, the freehold cannot be distrained, such as kilns, furnaces, cauldrons, windows, shutters, doors, chimney-pieces, anvils in a forge, and the like¹. No fixtures (so long as they continue such) are distrainable whether those fixtures are irremovable or fixtures severable by a tenant². Whether an article, such as a machine, is a parcel of the freehold, is a question of fact, depending on the circumstances of each case and principally on two considerations: (1) the mode of annexation to the soil or fabric of the house, whether it can easily be removed intact or not, without injury to itself or the fabric of the building; and (2) the purpose of annexation, whether it was for the permanent and substantial improvement of the dwelling or merely for a temporary purpose and the more complete enjoyment of it as a chattel³. In any event things cannot be distrained which cannot be restored in the same state in which they were before the distress⁴ and if, under a distress, fixtures are wrongfully removed from the freehold so as to be treated as chattels, a claim for conversion will lie at the instance of the tenant⁵. A temporary removal, for example for repair of a fixture, such as an anvil in a smith's shop or a millstone, does not destroy this privilege⁶.

1 Co Litt 47b; *Simpson v Hartopp* (1744) Willes 512 at 515, 1 Smith LC (13th Edn) 494; *Pitt v Shew* (1821) 4 B & Ald 206. As to fixtures see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 172 et seq. See also *Niblet v Smith* (1792) 4 Term Rep 504.

2 *Crossley Bros Ltd v Lee* [1908] 1 KB 86, DC. See also *Provincial Bill Posting Co v Low Moor Iron Co* [1909] 2 KB 344, CA (advertisement hoardings).

3 *Hellawell v Eastwood* (1851) 6 Exch 295 at 312 per Parke B. This statement, as distinct from the decision on the actual facts of the case, has been approved in several subsequent cases: see eg *Holland v Hodgson* (1872) LR 7 CP 328 at 336-337, Ex Ch; *Spyer v Phillipson* [1931] 2 Ch 183 at 194 per Luxmoore J (on appeal [1931] 2 Ch 183 at 209-210, CA, per Romer LJ), where the two considerations stated in *Hellawell v Eastwood* supra were said to be really one, namely what was the object and purpose of the annexation, the mode of annexation and consequences of severance being matters to be considered in determining the object and purpose. The actual decision in *Hellawell v Eastwood* supra was not followed in *Crossley Bros Ltd v Lee* [1908] 1 KB 86, DC; *Walmesley v Milne* (1859) 29 LJCP 97; *Climie v Wood* (1868) LR 3 Exch 257; *Longbottom v Berry* (1869) LR 5 QB 123; *Holland v Hodgson* supra; *Hobson v Gorringe* [1897] 1 Ch 182, CA; *Reynolds v Ashby & Son* [1904] AC 466, HL. A shop counter is not affixed for a 'temporary purpose', but an anchor dropped, or a carpet tacked to a floor, is distrainable: see *Holland v Hodgson* supra at 337. A 'railway' for the better enjoyment of a colliery is not distrainable: see *Turner v Cameron* (1870) LR 5 QB 306.

4 *Darby v Harris* (1841) 1 QB 895 (kitchen ranges, stoves, grates and coppers).

5 *Dalton v Whittem* (1842) 3 QB 961. As to conversion see TORT vol 45(2) (Reissue) PARA 548 et seq.

6 *Gorton v Falkner* (1792) 4 Term Rep 565 at 567 per Lord Kenyon CJ.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/938. Things in use.

938. Things in use.

Whatever is in a man's present use or occupation is for that time privileged from distress, such as a horse when being ridden, or an axe being used for cutting wood, or a net in a man's hand¹. This privilege extends to a horse drawing a cart and to the harness², to wearing apparel actually being worn³ and to a limited extent to wearing apparel not being worn⁴. In the case of animals, such as a dog, actual manual possession and use is necessary⁵.

1 Co Litt 47a; *Read v Burley* (1597) Cro Eliz 549. If this rule did not exist there would be a perpetual liability to a breach of the peace: see *Storey v Robinson* (1795) 6 Term Rep 138. A stocking frame being used by a weaver has been held privileged: *Simpson v Hartopp* (1744) Willes 512 at 517, 1 Smith LC (13th Edn) 494.

2 *Field v Adames* (1840) 12 Ad & El 649.

3 *Bisset v Caldwell* (1791) Peake 50; *Baynes v Smith* (1794) 1 Esp 206. At common law wearing apparel can be distrained, although merely taken off for the purposes of repose.

4 See PARA 942 post.

5 *Bunch v Kennington* (1841) 1 QB 679.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/939. Perishable articles.

939. Perishable articles.

Things of a perishable nature, or things that cannot be restored in the same state and condition as they were in before being taken or must necessarily be damaged by removal or severance, are exempt from distress¹. It has been considered that the flesh of animals lately slaughtered cannot, therefore, be distrained², nor can milk, fruit or things of a similar nature³. However, a cart loaded with corn is not within this rule⁴.

1 1 Roll Abr, Distress (H); Bac Abr, Distress (B); Co Litt 47a; *Simpson v Hartopp* (1744) Willes 512, 1 Smith LC (13th Edn) 494. It is on this principle that cocks and sheaves of corn were formerly held not distrainable: see PARA 929 text and note 6 ante.

2 *Morley v Pincombe* (1848) 2 Exch 101 (carcasses of pigs).

3 3 Bl Com (14th Edn) 9; Bullen *Law of Distress for Rent* (2nd Edn) 103. In Bullen *Law of Distress for Rent* (2nd Edn) 104, grain or flour out of a sack is also instanced.

4 3 Bl Com (14th Edn) 10; Co Litt 47a.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/940. Money.

940. Money.

Money is not distrainable unless it is in a bag or in such a closed or sealed receptacle that it can be identified¹.

¹ Bac Abr, Distress (B). The reason of this rule is to be found in the original law when distress was merely a form of pledge. See also *Wilson v Duckett* (1675) 2 Mod Rep 61.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/941. Animals.

941. Animals.

Animals *ferae naturae* in which there is no right of property are exempt from distress¹. Deer, however, may become valuable property by being kept in an inclosed ground or for purposes of profit, so that they can be considered the goods of the tenant². Dogs are now considered to be liable to distress³, as well as animals kept in cages⁴. Special privilege attaches in certain cases to livestock and farming animals⁵.

1 Co Litt 47a; 3 Bl Com (14th Edn) 7-8. For the cases in which there may be a qualified property in animals *ferae naturae* see ANIMALS vol 2 (2008) PARA 710 et seq.

2 *Davies v Powell* (1738) Willes 46; *Morgan v Earl of Abergavenny* (1849) 8 CB 768 (where deer in a park were considered to be reclaimed and to be no longer *ferae naturae*). See also *Ford v Tynte* (1861) 2 John & H 150.

3 They are included in the exemptions in Co Litt 47a but the modern opinion is that this exemption is no longer the law: see the discussion on this point in the notes to *Simpson v Hartopp* (1744) Willes 512, 1 Smith LC (13th Edn) 494; and see *Bunch v Kennington* (1841) 1 QB 679. As to dogs in actual use see PARA 938 ante.

4 As to captive animals see ANIMALS vol 2 (2008) PARA 712.

5 See AGRICULTURAL LAND vol 1 (2008) PARAS 347-348. As to agisted animals see PARA 1042 post; and ANIMALS vol 2 (2008) PARAS 721-723, 760.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/942. Wearing apparel etc.

942. Wearing apparel etc.

By statute¹ there are exempted from distress: (1) such tools, books, vehicles and other items of equipment as are necessary to the tenant for use personally by him in his employment, business or vocation; and (2) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the tenant and his family². This does not apply where the lease, term or interest of the tenant has expired and possession of the premises in respect of which the rent is claimed has been demanded, and the distress is made not earlier than seven days after the demand³. Where in spite of this statute such goods and chattels have been taken under a distress, a magistrates' court may on complaint direct their restoration and, if they have been sold, may order the person who levied or directed the levy to pay to the complainant such sum as the court may determine to be their value⁴.

Bedding includes whatever is used for the purposes of sleeping accommodation, such as a bedstead or a mattress⁵.

If an implement of trade, such as a sewing machine, is hired by a husband for the use of his wife, and the wife uses it and devotes her earnings to the support of the household and family, the hirer is held to carry on a trade by the hands of his wife, so as to privilege the implement from distress; the fact that the implement is hired and not the tenant's property is for this purpose immaterial⁶. A cab used by a driver is an implement of trade⁷, as is a piano used by a music teacher for teaching⁸ and the records, tapes and discs of a presenter of musical programmes⁹, but a typewriter used as a sample by a commercial traveller is not¹⁰.

1 At common law wearing apparel, unless in actual use (see *Bisset v Caldwell* (1791) Peake 50; *Baynes v Smith* (1794) 1 Esp 206), and bedding are distrainable. At common law tools are only conditionally privileged: see PARA 949 post.

2 See the Law of Distress Amendment Act 1888 s 4 (amended by the Statute Law Revision Act 1908); and the County Courts Act 1984 s 89(1)(a) (substituted by the Courts and Legal Services Act 1990 s 15(2)). See also *Boyd Ltd v Bilham* [1909] 1 KB 14.

3 Law of Distress Amendment Act 1888 s 4 proviso. The terms of this proviso are apparently cumulative.

4 See the Law of Distress Amendment Act 1895 s 4; and PARA 1100 post.

5 *Davis v Harris* [1900] 1 QB 729.

6 *Churchward v Johnson* (1889) 54 JP 326; *Masters v Fraser* (1901) 85 LT 611 at 613 per Lord Alverstone CJ (any lawful possession is sufficient).

7 *Lavell v Richings* [1906] 1 KB 480.

8 *Boyd Ltd v Bilham* [1909] 1 KB 14.

9 *Brookes v Harris* [1995] 1 WLR 918

10 *Addison v Shepherd* [1908] 2 KB 118. Apparently an implement is something to be used for actual work, and not merely to be shown for trade.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/943. Agricultural machinery and breeding stock.

943. Agricultural machinery and breeding stock.

Agricultural or other machinery and breeding stock on an agricultural holding are subject to special statutory privilege provided they are the property of a person other than the tenant¹.

¹ See AGRICULTURAL LAND vol 1 (2008) PARAS 347-348. As to other limitations on distress in relation to crops, livestock and farming animals see PARAS 929 ante, 989, 1042 post; and AGRICULTURAL LAND vol 1 (2008) PARAS 347-348; ANIMALS vol 2 (2008) PARA 760.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/944. Railway rolling stock.

944. Railway rolling stock.

Railway rolling stock being in a 'work' is not liable to be distrained for rent payable by a tenant of the work, unless the rolling stock is the tenant's actual property, provided that the ownership of the rolling stock is sufficiently indicated by a metal plate or other distinguishing mark conspicuously affixed¹. This protection does not, however, extend to a tenant's interest in the stock, which is liable to distress as if the tenant had possessed the whole interest². 'Work' is defined as including any colliery, quarry, mine, manufactory, warehouse, wharf, pier or jetty in or on which is any railway siding, and includes an engine shed on a siding connected with a railway³. 'Rolling stock' includes wagons, trucks, carriages of all kinds and locomotive engines used on railways⁴.

1 Railway Rolling Stock Protection Act 1872 s 3. A magistrates' court may make against the landlord such summary order for the restoration of rolling stock distrained or for payment of its real value and in respect of costs or otherwise, and may make such an order in the matter, and in respect of costs, against the person distraining, as seems to it just: s 4. If any party thinks himself aggrieved by any order or adjudication of a court of summary jurisdiction under the Railway Rolling Stock Protection Act 1872, or by dismissal of his complaint by any such court, he may appeal to the Crown Court: s 6 (amended by the Courts Act 1971 s 56(2), Sch 9 Pt I). See now also the Supreme Court Act 1981 (prospectively renamed the Senior Courts Act 1981) ss 1(1), 8, 45, 46, 48 (s 1(1) prospectively amended, ss 8, 48 as amended); and COURTS. 'Person' includes a body corporate: Railway Rolling Stock Protection Act 1872 s 2.

2 Ibid s 5. In case of disagreement between the landlord and the parties claiming the rolling stock as to the mode of disposing of the tenant's interest, the disagreement is to be settled by the magistrates' court, and the court may, on the application of either party, make such order as it thinks fit: s 5. There is an appeal to the Crown Court: see s 6 (as amended); and note 1 supra. 'Tenant' includes a lessee, sublessee or other person having an interest in a work under a lease or agreement, or by use and occupation, or being otherwise liable to pay any rent in respect of a work: s 2. 'Rent' includes a royalty or other reservation in the nature of rent: s 2.

3 Ibid s 2; and see *Easton Estate and Mining Co v Western Waggon and Property Co* (1886) 54 LT 735, DC (where the definition clause was held not to be exhaustive of the word 'work').

4 Railway Rolling Stock Protection Act 1872 s 2. In *Easton Estate and Mining Co v Western Waggon and Property Co* (1886) 54 LT 735, DC, the magistrates found as a fact that the engine was in use on a branch line of the railway.

UPDATE

944 Railway rolling stock

NOTE 1--Supreme Court Act 1981 cited as Senior Courts Act 1981 as from 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/945. Gas fittings.

945. Gas fittings.

Any gas meter which is connected to a service pipe, and any gas fitting in a consumer's premises which is owned by a gas transporter¹ or gas supplier and is marked or impressed with a sufficient mark or brand indicating its owner is not subject to distress or liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession it may be². 'Gas fittings' means gas pipes and meters, and fittings, apparatus and appliances designed for use by consumers of gas for heating, lighting, motive power and other purposes for which gas can be used³.

1 For the meaning of 'gas transporter' see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805.

2 Gas Act 1986 s 8B, Sch 2B para 29 (s 8B, Sch 2B both added by the Gas Act 1995 s 9, Sch 2; and the Gas Act 1986 Sch 2B para 29 amended by the Utilities Act 2000 s 108, Sch 6 paras 1, 2(1)). See further FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 868.

3 Gas Act 1986 s 48(1).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/946. Water fittings.

946. Water fittings.

Water fittings let for hire by a water undertaker¹ and bearing either a distinguishing metal plate affixed to them or a distinguishing brand or other mark conspicuously impressed or made on them, sufficiently indicating the undertakers as the actual owners of the fittings, are not subject to distress². 'Water fittings' includes pipes (other than water mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water³.

1 See WATER AND WATERWAYS vol 100 (2009) PARA 137 et seq.

2 See the Water Industry Act 1991 s 179(4), (7); and WATER AND WATERWAYS vol 100 (2009) PARA 318 et seq.

3 Ibid ss 93(1), 179(7).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(ii) Things Absolutely Privileged/947. Electricity fittings.

947. Electricity fittings.

Any electric line, electrical plant or electricity meter belonging to or provided by an electricity distributor¹ or electricity supplier² which is marked or impressed with a sufficient mark or brand indicating a supplier or distributor as the owner or provider of it is not, in England and Wales, subject to distress³.

'Electric line' means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended, any apparatus connected to any such line for the purpose of carrying electricity, and any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line⁴. 'Electrical plant' means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission, distribution or supply of electricity, other than an electric line, a meter used for ascertaining the quantity of electricity supplied to any premises, or an electrical appliance under the control of a consumer⁵.

1 'Electricity distributor' means any person who is authorised by a distribution licence to distribute electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence; and 'electricity supplier' means any person who is authorised by a supply licence to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence: see the Electricity Act 1989 s 6(9) (substituted by the Utilities Act 2000 s 30); and the Electricity Act 1989 s 64(1) (definitions added by the Utilities Act 2000 s 108, Sch 6 paras 24, 38(1), (4)). See also FUEL AND ENERGY.

2 See note 1 *supra*.

3 See the Electricity Act 1989 s 24, Sch 6 para 11 (s 24 amended by the Utilities Act 2000 s 51(1); and the Electricity Act 1989 Sch 6 substituted by the Utilities Act 2000 s 51(2), Sch 4); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1108.

4 Electricity Act 1989 s 64(1).

5 *Ibid* s 64(1) (definition amended by the Utilities Act 2000 s 108, Sch 6 paras 24, 38(1), (3)).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iii) Things Conditionally Privileged/948. In general.

(iii) Things Conditionally Privileged

948. In general.

In certain cases goods can be distrained only if there is no other sufficient distress upon the premises¹. These include agisted animals², beasts of the plough and sheep³, growing crops which have been seized in execution⁴ and instruments of trade⁵. The presence of goods of a third party does not bar distress even if those goods are not protected by privilege⁶. In claims for wrongful distress brought at common law it has been held that the onus of proof that no other sufficient distress can be found lies on the distrainer⁷. Where on a fair estimate of the goods on the premises the distrainer bona fide believed that the distress would not be satisfied without taking goods conditionally privileged, no action will lie against the distrainer for distraining on them, even if ultimately it is shown that the remaining goods would have been sufficient in value to satisfy the landlord's claim, for the circumstances of the distress at the time it is made constitute the test, and no rule exists that if the distrainer in such a case acts bona fide and reasonably the other goods must be disposed of before those conditionally privileged are sold⁸. A landlord can also seize goods conditionally privileged, if there is other sufficient distress on the premises (such as growing crops) which is not immediately available⁹. If insufficient distress is at first seized, the tenant may be subjected to a second seizure¹⁰.

1 *Simpson v Hartopp* (1744) Willes 512, 1 Smith LC (13th Edn) 494; *Muspratt v Gregory* (1838) 3 M & W 677, Ex Ch; *Lyons v Elliott* (1876) 1 QBD 210 at 215 per Lush J.

2 See the Agricultural Holdings Act 1986 s 18(2); para 1042 post; and AGRICULTURAL LAND vol 1 (2008) PARA 347; ANIMALS vol 2 (2008) PARA 760.

3 See AGRICULTURAL LAND vol 1 (2008) PARA 347. See also *Swaffer v Mulcahy* [1934] 1 KB 608 (privilege not applicable to distress for tithe rentcharge). As to animals generally see PARA 941 ante. For certain cases in which breeding stock and farming animals are absolutely privileged from distress see PARA 1042 post; and AGRICULTURAL LAND vol 1 (2008) PARAS 347-348.

4 See PARA 1043 post.

5 See PARA 949 post.

6 *Roberts v Jackson* (1795) Peake Add Cas 36.

7 *Nargett v Nias* (1859) 1 E & E 439. However, compare *Gonsky v Durrell* [1918] 2 KB 71, CA (a case brought under the Law of Distress Amendment Act 1888), in which the Court of Appeal held that where a claim was brought under that Act the onus was on the plaintiff and Scrutton LJ doubted if *Nargett v Nias* supra was correctly decided.

8 See *Jenner v Yolland* (1818) 6 Price 3 (a decision on the statutory privilege of beasts of the plough).

9 *Piggott v Birtles* (1836) 1 M & W 441.

10 *Hutchins v Chambers* (1758) 1 Burr 579. See PARA 1060 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iii) Things Conditionally Privileged/949. Tools of trade or husbandry.

949. Tools of trade or husbandry.

At common law, the tools and instruments of a person's trade or profession and instruments of husbandry (if they are not in actual use)¹ are distrainable only if there are not other goods on the premises sufficient to countervail the arrears of rent². The axe of a carpenter, the books of a scholar, the kneading-trough of a baker, the stocking-frame or loom of a weaver and even the cab of a cabdriver have been held to be within this rule³. It is doubtful whether ledgers, day-books and papers of a business or professional person fall within the exemption⁴.

1 See PARA 938 ante. As to the statutory privilege of agricultural machinery hired by a tenant see AGRICULTURAL LAND VOL 1 (2008) PARA 347.

2 Co Litt 47a; 3 Bl Com (14th Edn) 8-9; *Simpson v Hartopp* (1744) Willes 512, 1 Smith LC (13th Edn) 494; *Gorton v Falkner* (1792) 4 Term Rep 565; *Roberts v Jackson* (1795) Peake Add Cas 36. In addition to conditional exemption at common law, protection may also be given by statute under the Law of Distress Amendment Act 1888 s 4 (as amended): see PARA 942 ante. As to other distress on the premises see PARA 948 ante.

3 See Gilbert on Distress and Replevin (4th Edn) 33; *Lavell v Richings* [1906] 1 KB 480; and other authorities, relating to the Law of Distress Amendment Act 1888, cited in para 942 ante. See also *Fenton v Logan* (1833) 9 Bing 676 (no evidence of other goods); *Nargett v Nias* (1859) 1 E & E 439 (farm labourer's spade and fork); *Davies v Aston* (1845) 1 CB 746 at 749 (household goods).

4 *Gauntlett v King* (1857) 3 CBNS 59.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/950. Exceptions to common law rule.

(iv) Goods of Undertenants, Lodgers and Strangers

950. Exceptions to common law rule.

The common law rule that a landlord could distrain for rent on all goods on the demised premises, even though not the property of the tenant¹, is subject to many qualifications. As already mentioned, exceptions have been grafted on to the rule in the interests of trade, husbandry and public convenience², and, further, a landlord may by his own act or conduct be estopped from setting up a right to seize the property of a third person. Thus a landlord cannot distrain on the goods of a third person brought on the demised premises by the landlord himself³ or with his consent⁴, and by his conduct he may be held to have waived⁵ his right of distress on a stranger's goods, an agreement not to distrain being implied from the circumstances where necessary⁶.

When a stranger's goods (even those of a lodger or subtenant), which are lawfully on the premises, are lawfully distrained by the landlord for rent due from someone else, the owner of the goods is entitled to be reimbursed their value from the person from whom the rent was due⁷.

1 See PARA 928 ante.

2 See PARA 930 et seq ante. As to goods bailed to a tenant on hire purchase see PARA 955 post.

3 *Paton v Carter* (1883) Cab & El 183.

4 *Fowkes v Joyce* (1689) 2 Vern 129.

5 *Welsh v Rose* (1830) 6 Bing 638 (conditional agreement not to distrain). See also PARA 978 post.

6 *Horsford v Webster* (1835) 1 Cr M & R 696; *Giles v Spencer* (1857) 3 CBNS 244. It was held, in *Cresswell v Jeffreys* (1912) 28 TLR 413 (revsd on another point 29 TLR 90, CA), that a statement by the landlord's agent, to the effect that in the particular circumstances distraint was not possible, did not constitute an estoppel against the landlord; but it is doubtful whether this decision can be relied on as, generally, a representation by an authorised agent is as effectual for the purposes of estoppel as if it had been made by his principal.

7 3 Bl Com (14th Edn) 8; *Exall v Partridge* (1799) 8 Term Rep 308. See also *Edmunds v Wallingford* (1885) 14 QBD 811 at 814, CA; *Re Button, ex p Haviside* [1907] 2 KB 180, CA. See also RESTITUTION vol 40(1) (2007 Reissue) PARA 68.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/951. Statutory protection.

951. Statutory protection.

By statute¹ an additional measure of protection has been given to certain undertenants², and to lodgers³, and to any other person not being a tenant⁴ of the premises or of any part of them, and not having any beneficial interest in any tenancy of the premises or of any part of them⁵.

1 See the Law of Distress Amendment Act 1908 s 1 (as amended); and PARAS 952, 956-957 post. See generally *Rhodes v Allied Dunbar Pension Services Ltd, Re Offshore Ventilation Ltd* [1989] 1 All ER 1161 at 1163-1165, [1989] 1 WLR 800 at 803-805, CA, per Nicholls LJ. Provisions similar to those contained in the Law of Distress Amendment Act 1908 ss 1, 2 (as originally enacted) (see PARA 959 post) were contained in the Lodgers' Goods Protection Act 1871 but restricted to lodgers only. The Lodgers' Goods Protection Act 1871 was repealed, 'wherever and so far as this Act applies' by the Law of Distress Amendment Act 1908 s 8. The exact effect of this repeal is not obvious but, in as much as the provisions of the two Acts in regard to lodgers are almost identical, it is thought unnecessary to state those of the Lodgers' Goods Protection Act 1871, and the cases decided under the earlier Act are treated as authorities for the interpretation of the later Act.

2 See the Law of Distress Amendment Act 1908 s 1(a); and PARA 952 post. 'Undertenant' does not include a lodger: s 9.

3 Ibid s 1(b). As to lodgers see PARA 953 post.

4 'Tenant' does not include a lodger: ibid s 9.

5 Ibid s 1(c). See also *Cunliffe Engineering Ltd v English Industrial Estates Corp* [1994] BCC 972 (bank with charge over tenant's chattels not within the scope of the Law of Distress Amendment Act 1908 s 1 (as amended)).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/952. Undertenants.

952. Undertenants.

For an undertenant¹ to be within the protection of the Law of Distress Amendment Act 1908 he must be liable to pay, by equal instalments not less often than every actual or customary quarter of a year, a rent which would return in any whole year the full annual value of the premises or the part of them comprised in the undertenancy². However, the protection does not extend to an undertenancy created in breach of any covenant or agreement in writing between the landlord and his immediate tenant³; nor does it extend to an undertenancy created under a lease existing at the date of the passing of the Act contrary to the landlord's wish in that behalf, where that wish has been expressed in writing and delivered at the premises within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge⁴. 'Rent' means a sum of money actually agreed to be paid as between the tenant and undertenant. Thus it does not include the contingent profit or advantage which the tenant may acquire from boarding with the undertenant⁵.

1 As to the meaning of 'undertenant' see PARA 951 note 2 ante.

2 Law of Distress Amendment Act 1908 s 1(a).

3 As to the meaning of 'tenant' see PARA 951 note 4 ante.

4 Law of Distress Amendment Act 1908 s 5. The date of the passing of the Law of Distress Amendment Act 1908 was 21 December 1908, although it did not come into operation until 1 July 1909.

5 *Parsons v Hambridge* (1916) 33 TLR 117; revsd on appeal (1917) 33 TLR 346, CA, on the ground that there was no evidence that the full annual value was being paid as rent in accordance with the Law of Distress Amendment Act 1908 s 1(a).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/953. Lodgers.

953. Lodgers.

The Law of Distress Amendment Act 1908 does not define the term 'lodger', but it is not included in the terms 'tenant' and 'undertenant'¹, and the word is probably used in its popular meaning. The onus of proving that an individual is within the statute lies on the person claiming protection as a lodger². Whether the claimant is a lodger is a question of fact³. A lodger may be an undertenant at the same time⁴. The immediate tenant must retain power and dominion over the house; the lodger may have the exclusive right to the rooms he occupies and uncontrolled right of ingress and egress, but the person letting must have a right to interfere with the general control of the house⁵. The lodger may occupy a very substantial part, but, it seems, not the whole of the house⁶. In general, if the immediate tenant or his agent lives on the premises and manages them himself, or has a servant resident on the premises who manages them on his behalf, the presumption is that the other residents are lodgers, while if he does not so reside, the presumption is that the persons to whom he lets are tenants, but the presumption is not conclusive⁷. The lodger must sleep on the premises to come within the protection of the statute, so that mere occupation of premises for business purposes in the daytime is insufficient⁸.

1 As to the meaning of 'tenant' see PARA 951 note 4 ante; and as to the meaning of 'undertenant' see PARA 951 note 2 ante.

2 *Morton v Palmer* (1881) 51 LJQB 7, CA. See also *Thwaites v Wilding* (1883) 12 QBD 4 at 7, CA, per Bowen LJ; and see *Bensing v Ramsay* (1898) 62 JP 613. As to the interest and rights of a lodger see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 16.

3 *Morton v Palmer* (1881) 51 LJQB 7 at 9, CA, per Brett LJ, and at 11 per Lindley LJ. The question of the exact dominion or control of the landlord is one of fact: *Ness v Stephenson* (1882) 9 QBD 245 at 249 per Field J.

4 *Phillips v Henson* (1877) 3 CPD 26.

5 *Toms v Luckett* (1847) 5 CB 23 at 38 per Maule J; *Bradley v Baylis* (1881) 8 QBD 195 at 219, CA, per Jessel MR; *Kent v Fittall* [1906] 1 KB 60 at 70, CA, per Collins MR, and at 76 per Romer LJ (electoral registration cases); *Morton v Palmer* (1881) 51 LJQB 7, CA; *Ness v Stephenson* (1882) 9 QBD 245. See also *Allan v Liverpool Overseers* (1874) LR 9 QB 180 at 191-192; *Noblett and Mansfield v Manley* [1952] SASR 155 at 157-158; and see *Street v Mountford* [1985] AC 809, [1985] 2 All ER 289, HL.

6 *Phillips v Henson* (1877) 3 CPD 26 at 32.

7 See *Honig v Redfern* [1949] 2 All ER 15 at 17, 47 LGR 447 at 449, DC, per Lord Goddard CJ (an aliens' registration case); and see *Bradley v Baylis* (1881) 8 QBD 195 at 220, 241, CA; *Kent v Fittall* [1906] 1 KB 60 at 70, CA, per Collins MR, and at 76 per Romer LJ (both electoral registration cases). See also *Morton v Palmer* (1881) 51 LJQB 7, CA; *Page v Vallis* (1903) 19 TLR 393.

8 *Heawood v Bone* (1884) 13 QBD 179.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/954. Goods excluded from protection.

954. Goods excluded from protection.

The Law of Distress Amendment Act 1908 does not protect goods of the following categories:

- 1 (1) goods belonging to the husband or wife or civil partner of the tenant¹ whose rent is in arrear²;
- 2 (2) goods comprised in a settlement made by the tenant³;
- 3 (3) goods in the possession, order or disposition of the tenant by the consent and permission of the true owner under such circumstances that the tenant is the reputed owner of them⁴;
- 4 (4) any agisted livestock⁵ on land comprised in a tenancy to which the Agricultural Holdings Act 1986 applies⁶;
- 5 (5) goods of a partner of the immediate tenant⁷;
- 6 (6) goods (not being goods of a lodger⁸) upon premises where any trade or business is carried on in which both the immediate tenant and the undertenant⁹ have an interest¹⁰;
- 7 (7) goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice which must be given in a like manner as notice to quit to remove the goods and vacate the premises¹¹;
- 8 (8) goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer or in the employment of such company or corporation¹².

It is competent for two justices, upon hearing the parties, to determine whether any goods are in fact goods included in heads (5) to (8) above¹³.

1 As to the meaning of 'tenant' see PARA 951 note 4 ante.

2 Law of Distress Amendment Act 1908 s 4(1) (amended by the Civil Partnership Act 2004 s 26(1), Sch 27 para 3). Goods let on hire purchase to the husband or wife of the tenant do not 'belong' to such husband or wife: *Shenstone & Co v Freeman* [1910] 2 KB 84, DC; *Rogers, Eungblut & Co v Martin* [1911] 1 KB 19, CA.

3 Law of Distress Amendment Act 1908 s 4(1) (amended by the Consumer Credit Act 1974 s 192(3)(b), Sch 5 Pt I).

4 Law of Distress Amendment Act 1908 s 4(1). See *Re Parker, ex p Turquand* (1885) 14 QBD 636, CA; *Chappell & Co Ltd v Harrison* (1910) 103 LT 594, DC; *Times Furnishings Co Ltd v Hutchings* [1938] 1 KB 775; *North General Wagon and Finance Co Ltd v Graham* [1950] 2 KB 7, [1950] 1 All ER 780, CA; *Moorgate Mercantile Co Ltd v Finch Read* [1962] 1 QB 701, [1962] 2 All ER 467, CA; *Perdana Properties Bhd v United Orient Leasing Co Sdn Bhd* [1982] 1 All ER 193, [1981] 1 WLR 1496, PC; *Cunliffe Engineering Ltd v English Industrial Estates Corp* [1994] BCC 972; *Salford Van Hire (Contracts) Ltd v Bocholt Developments Ltd* [1996] RTR 103, [1995] 2 EGLR 50, CA. As to goods subject to hire purchase agreements see PARA 955 post.

The Law of Distress Amendment Act 1908 s 4(1) (as amended) is not satisfied merely by showing that where a wife hires goods they are found on the premises where she is living with her husband: *Rogers, Eungblut & Co v Martin* [1911] 1 KB 19, CA (hire of piano). Where it is sought to exclude the doctrine of reputed ownership by evidence of usage, that usage must be strictly proved: *Salford Van Hire (Contracts) Ltd v Bocholt Developments Ltd* supra (hired vans not within reputed ownership of tenant); *Chappell & Co Ltd v Harrison* supra (usage alleged of letting pianos to lessees of theatres on hire purchase). Judicial notice will be taken of a usage of hotel keepers to hire the furniture of their hotels: *Re Parker, ex p Turquand* supra; and see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 684.

- 5 le within the meaning of the Agricultural Holdings Act 1986 s 18(5): see AGRICULTURAL LAND vol 1 (2008) PARA 347.
- 6 Law of Distress Amendment Act 1908 s 4(1) (amended by the Agricultural Holdings Act 1986 s 100, Sch 14 para 4; and the Agricultural Tenancies Act 1995 s 40, Schedule para 2).
- 7 Law of Distress Amendment Act 1908 s 4(2)(a).
- 8 As to lodgers see PARA 953 ante.
- 9 As to the meaning of 'undertenant' see PARA 951 note 2 ante.
- 10 Law of Distress Amendment Act 1908 s 4(2)(b).
- 11 Ibid s 4(2)(c). As to notice to quit see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 213 et seq.
- 12 Ibid s 4(2)(d).
- 13 Ibid s 4(2) proviso (amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V Table (3)). Compare the powers (see PARA 959 post) of a magistrate or magistrates after service of the declaration and inventory: presumably an ordinary civil claim is necessary to test questions arising under heads (1)-(4) in the text.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/955. Hire purchase etc.

955. Hire purchase etc.

Goods let to a hirer on hire purchase remain the property of the owner¹ but they are not thereby necessarily protected from distress². Goods bailed under a hire purchase agreement³ or a consumer hire agreement⁴ or agreed to be sold under a conditional sale agreement⁵ are, where the relevant agreement has not been terminated⁶, excluded from the general protection to the goods of strangers given by the Law of Distress Amendment Act 1908⁷, except during the period between the service of a default notice⁸ in respect of the goods and the date when the notice expires or is earlier complied with⁹. Goods comprised in an agreement made by the tenant's husband or wife are not excluded from protection¹⁰, but, if such an agreement is made by one of two joint tenants, the goods are excluded from protection¹¹.

Goods comprised in a bill of sale are excluded from the general protection of the Law of Distress Amendment Act 1908 except during the period between service of a default notice¹² in respect of goods subject to a regulated agreement¹³ under which a bill of sale is given by way of security and the date on which the notice expires or is earlier complied with¹⁴.

A creditor or owner is not entitled to enforce a term of a regulated agreement by recovering possession of any goods or treating any right conferred on the debtor or hirer as terminated, restricted or deferred except by or after giving the debtor or hirer not less than seven days' notice in a prescribed form of his intention to do so; similar notice is to be required of an intention to terminate a regulated agreement otherwise than on the ground of a breach by the debtor or hirer¹⁵.

Express provision is frequently made in hire purchase agreements for the automatic termination of the agreement if the landlord of the hirer levies or threatens to levy a distress. It seems that the operation of such a provision may be affected by the statutory restrictions on termination¹⁶. It has been held that at common law, even where an express provision for termination is made, the goods remain comprised in a hire purchase agreement if any contractual right or agreement still subsists after a purported termination¹⁷. Even if there is a termination, goods remaining in the possession of the hirer may be within the reputed ownership of the hirer and so liable to distress¹⁸.

Goods let on hire purchase may be exempted from distress by express agreement between the owner and the landlord¹⁹. Goods let on hire purchase may be protected from distress under provisions relating to goods delivered for the purpose of a public trade²⁰, fixtures, goods in use²¹, wearing apparel, bedding and tools of trade²², agricultural machinery and breeding stock²³, gas fittings²⁴, water fittings²⁵ and electricity fittings²⁶.

1 See generally CONSUMER CREDIT vol 9(1) (Reissue) PARA 23 et seq.

2 Cf para 928 ante.

3 'Hire purchase agreement' means an agreement, other than a conditional sale agreement, under which: (1) goods are bailed in return for periodical payments by the person to whom they are bailed; and (2) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs: (a) the exercise of an option to purchase by that person; (b) the doing of any other specified act by any party to the agreement; (c) the happening of any other specified event: Law of Distress Amendment Act 1908 s 4A(3) (s 4A added by the Consumer Credit Act 1974 s 192(3)(a), Sch 4 para 5); and see CONSUMER CREDIT vol 9(1) (Reissue) PARA 23 et seq.

4 A 'consumer hire agreement' is an agreement made by a person with an individual ('the hirer') for the bailment of goods to the hirer, being an agreement which: (1) is not a hire purchase agreement; (2) is capable of subsisting for more than three months; and (3) does not require the hirer to make payments exceeding £25,000: Consumer Credit Act 1974 s 15(1) (amended by the Consumer Credit (Increase of Monetary Limits) Order 1983, SI 1983/1874, art 4, Schedule Pt II; and the Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998, SI 1998/996, art 2); definition applied by the Law of Distress Amendment Act 1908 s 4A(3) (as added: see note 3 supra). The Consumer Credit Act 1974 s 15(1)(c) (as amended) (see head (3) supra) and the word 'and' preceding it are repealed by the Consumer Credit Act 2006 ss 2(2), 70, Sch 4 as from a day to be appointed under s 71(2). At the date at which this volume states the law no such day had been appointed. As to consumer hire agreements see CONSUMER CREDIT vol 9(1) (Reissue) PARA 82.

5 'Conditional sale agreement' means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled: Law of Distress Amendment Act 1908 s 4A(3) (as added: see note 3 supra).

6 See the text and notes 15-17 *infra*.

7 See PARAS 951 *ante*, 956 *et seq post*.

8 See note 15 *infra*.

9 Law of Distress Amendment Act 1908 s 4A(1) (as added: see note 3 supra).

10 *Shenstone & Co v Freeman* [1910] 2 KB 84, DC; *Rogers, Eungblut & Co v Martin* [1911] 1 KB 19, CA.

11 *AW Gamage Ltd v Payne* (1925) 134 LT 222, DC.

12 *Ie* under the Consumer Credit Act 1974: see generally CONSUMER CREDIT.

13 'Regulated agreement' means a consumer credit agreement, or consumer hire agreement, other than an exempt agreement: *ibid* s 189(1); definition applied by the Law of Distress Amendment Act 1908 s 4A(3) (as added: see note 3 supra). See CONSUMER CREDIT vol 9(1) (Reissue) PARA 2.

14 *Ibid* s 4A(2) (as added: see note 3 supra). As to bills of sale generally see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1620 *et seq*.

15 See the Consumer Credit Act 1974 ss 76, 98; and CONSUMER CREDIT vol 9(1) (Reissue) PARAS 234, 262. As to default notices see ss 87-89 (s 88 as amended; prospectively amended); and CONSUMER CREDIT vol 9(1) (Reissue) PARA 263 *et seq*.

16 See the text and note 15 *supra*.

17 See *eg Hackney Furnishing Co v Watts* [1912] 3 KB 225, DC; *Jay's Furnishing Co v Brand & Co* [1915] 1 KB 458, CA; *Smart Bros Ltd v Holt* [1929] 2 KB 303; *Drages Ltd v Owen* (1935) 52 TLR 108; *Times Furnishing Co Ltd v Hutchings* [1938] 1 KB 775, [1938] 1 All ER 422.

18 *Times Furnishing Co Ltd v Hutchings* [1938] 1 KB 775, [1938] 1 All ER 422; cf para 654 note 4 *ante*. See further CONSUMER CREDIT vol 9(1) (Reissue) PARAS 23-44.

19 See note 2 *supra*.

20 See PARAS 932-936 *ante*.

21 See PARAS 937-938 *ante*.

22 See PARA 942 *ante*.

23 See PARA 943 *ante*.

24 See PARA 945 *ante*.

25 See PARA 946 *ante*.

26 See PARA 947 *ante*.

UPDATE

955 Hire purchase etc

NOTE 4--Appointed day is 6 April 2008: SI 2007/3300.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/956. Declaration by person protected.

956. Declaration by person protected.

If any superior landlord¹ levies or authorises the levy of a distress on any furniture, goods or chattels of any person protected by the Law of Distress Amendment Act 1908² for arrears of rent due to the superior landlord by his immediate tenant³, any person so protected may serve the superior landlord, or the bailiff or other agent employed by him to levy such distress, with a declaration in writing⁴, setting forth that the immediate tenant has no right of property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and that the furniture, goods or chattels are the property or in the lawful possession of the person protected, and are not goods or livestock to which the Act is expressed not to apply⁵. If the person serving the declaration is an undertenant or lodger, he must also set forth the amount of rent, if any, then due to his immediate landlord, and the amount of future instalments of rent and times at which those instalments will become due; the declaration must also contain an undertaking to pay to the superior landlord any rent so due or to become due to his immediate landlord until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off⁶. The declaration must comply strictly with the Act⁷, but it need not, if no rent is due, in terms say so, and if a declaration does not state that any rent is due it will be read as stating that no rent is due⁸. In the case of a partnership it may be made by one partner with the authority of the other partners⁹. In the case of a company the declaration may be signed by a duly authorised agent of the company¹⁰.

1 'Superior landlord' includes a landlord in cases where the goods in question are not those of an undertenant or lodger: Law of Distress Amendment Act 1908 s 9. As to the meaning of 'undertenant' see PARA 951 note 2 ante. As to lodgers see PARA 953 ante.

2 See PARAS 951-955 ante.

3 For the meaning of 'tenant' see PARA 951 note 4 ante.

4 A statutory declaration is not required: *Rogers, Eungblut & Co v Martin* [1911] 1 KB 19, CA.

5 Law of Distress Amendment Act 1908 s 1. Beneficial interest is not defined in the Act.

6 Ibid s 1.

7 *Druce & Co Ltd v Beaumont Property Trust Ltd* [1935] 2 KB 257.

8 *Ex p Harris* (1885) 16 QBD 130, CA.

9 *Rogers, Eungblut & Co v Martin* [1911] 1 KB 19, CA.

10 *Lawrence Chemical Co Ltd v Rubenstein* [1982] 1 All ER 653, [1982] 1 WLR 284, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/957. Inventory to declaration.

957. Inventory to declaration.

To the declaration¹ must be annexed a correct inventory subscribed by the person so claiming protection of the furniture, goods or chattels referred to in the declaration², and if that person knowingly and wilfully makes a statement in such declaration or inventory which is false in a material particular he is guilty of an offence³.

1 See PARA 956 ante.

2 Law of Distress Amendment Act 1908 s 1 (amended by the Perjury Act 1911 s 17, Schedule). Where a proper declaration was made and signed with a statement that 'the list of articles hereto annexed is a correct inventory', and the inventory was written on the same piece of paper, but not otherwise signed or subscribed, the inventory was held (under the Lodgers' Goods Protection Act 1871 (repealed) (see PARA 951 note 1 ante)) sufficiently subscribed within the Act: *Godlonton v Fulham and Hampstead Property Co* [1905] 1 KB 431.

3 See the Perjury Act 1911 s 5 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 717.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/958. When declaration is to be made.

958. When declaration is to be made.

The declaration¹ must be subsequent to the seizure or threat of seizure, so that a declaration made in consequence of one distress is not available for a second distress, even if the facts in the declaration originally made are still correct at the time of the second distress². The Law of Distress Amendment Act 1908³ does not specify any time within which the declaration must be served, but if the landlord proceeds to sell within the five days mentioned in the Distress for Rent Act 1689⁴, a claim will lie at the suit of the person protected by the Law of Distress Amendment Act 1908, although he has not served any declaration and inventory⁵.

1 See PARA 956 ante.

2 *Thwaites v Wilding* (1883) 12 QBD 4, CA. The rights of the parties must be ascertained at the moment the distress is levied: *Thwaites v Wilding* supra at 7 per Bowen LJ.

3 See the Law of Distress Amendment Act 1908 s 1 (as amended); and PARAS 956-957 ante.

4 See the Distress for Rent Act 1689 s 1 (as amended); and PARAS 1044, 1049 post.

5 *Sharpe v Fowle* (1884) 12 QBD 385; and see *Fisher v Algar* (1826) 2 C & P 374.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/959. Penalty for disregard of the Law of Distress Amendment Act 1908.

959. Penalty for disregard of the Law of Distress Amendment Act 1908.

If after being served with a declaration and inventory¹, and in the case of an undertenant² or lodger³, after an undertaking has been given⁴ and the rent, if any, then due has been paid or tendered in accordance with that undertaking, the superior landlord⁵, or any bailiff or other agent levies or proceeds with a distress on the furniture, goods or chattels of any person protected by the Law of Distress Amendment Act 1908, he is deemed guilty of an illegal distress, and any person so protected may apply to a justice of the peace for an order for the restoration to him of the goods⁶.

The hearing of the application must be before two justices who inquire into the truth of both the declaration and inventory and make such order for the recovery of the goods, or otherwise, as may be just⁷, but the justices cannot award damages for illegal distress⁸. The superior landlord will also be liable in law at the suit of the person so protected⁹, and so will the bailiff¹⁰.

1 See PARAS 956-957 ante.

2 As to the meaning of 'undertenant' see PARA 951 note 2 ante.

3 As to lodgers see PARA 953 ante.

4 See PARA 956 text and note 6 ante.

5 As to the meaning of 'superior landlord' see PARA 956 note 1 ante.

6 Law of Distress Amendment Act 1908 s 2.

7 Ibid s 2 (amended by the Access to Justice Act 1999 s 78(2), Sch 11 para 11).

8 *Lowe v Dorling & Son* [1905] 2 KB 501 at 504 per Lord Alverstone CJ.

9 Law of Distress Amendment Act 1908 s 2. In the claim the truth of the declaration and inventory may be inquired into: s 2.

10 *Lowe v Dorling & Son* [1906] 2 KB 772, CA (Collins MR dissenting); and see also the judgment of Lord Alverstone CJ in the Divisional Court reported at [1905] 2 KB 501. It seems that *Page v Vallis* (1903) 19 TLR 393 must be regarded as overruled.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/960. Procedure to avoid distress.

960. Procedure to avoid distress.

Where the rent of the immediate tenant¹ of the superior landlord² is in arrear, the superior landlord may serve upon any undertenant³ or lodger⁴ a notice⁵ stating the amount of such arrears of rent, and requiring all future payments of rent, whether already accrued due or not, by the undertenant or lodger to be made direct to the superior landlord, until such arrears have been duly paid⁶. The notice will operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such rent⁷. The appointment of a receiver or manager of tenant's property by the debenture holder of a tenant does not prevent the landlord serving a notice on the subtenant to pay to the landlord rent owing to the tenant⁸. The superior landlord's right takes priority to the right of a rating authority to recover rates from the undertenant or lodger⁹.

1 As to the meaning of 'tenant' see PARA 951 note 4 ante.

2 As to the meaning of 'superior landlord' see PARA 956 note 1 ante.

3 As to the meaning of 'undertenant' see PARA 951 note 2 ante.

4 As to lodgers see PARA 953 ante.

5 I.e. by registered post or recorded delivery service addressed to the undertenant or lodger upon the premises: Law of Distress Amendment Act 1908 s 6; Recorded Delivery Service Act 1962 ss 1(1), 2(1). As the object of the provision is that the notice should come to the notice of the person for whom it was intended, personal service of the notice is sufficient: *Jarvis v Hemmings* [1912] 1 Ch 462. The provision for service by registered post or recorded delivery service merely enables the landlord to serve the notice effectively by that method: *Jarvis v Hemmings* supra.

6 Law of Distress Amendment Act 1908 s 6.

7 Ibid s 6. The marginal note to s 6 is 'to avoid distress', but there is no provision which prevents a landlord from distraining upon his immediate tenant after service of the notice; nor is any provision made for an undertenant or lodger to take proceedings corresponding to interpleader, if informed by the immediate tenant that the superior landlord's notice is in any way wrongful. The service of a notice under s 6 is not a 'taking of possession of any property' such as to require the leave of the court under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(2)(a) (see ARMED FORCES vol 2(2) (Reissue) PARA 85), in a case where the immediate tenant is within the protection of that Act; nor is the actual receipt of rent from the subtenant in consequence of a notice such a 'taking of possession of any property': see *Wallrock v Equity and Law Life Assurance Society* [1942] 2 KB 82, [1942] 1 All ER 510, CA (a decision under the Courts (Emergency Powers) Act 1939 (repealed)). See further ARMED FORCES vol 2(2) (Reissue) PARA 81.

8 See *Rhodes v Allied Dunbar Pension Services Ltd, Re Offshore Ventilation Ltd* [1989] 1 All ER 1161, [1989] 1 WLR 800, CA.

9 General Rate Act 1967 s 61(2) (saved by the General Rate Act 1967 and Related Provisions (Savings and Consequential Provision) Regulations 1990, 1990/777, reg 3(1), Sch 1).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(4) WHAT MAY AND WHAT MAY NOT BE DISTRAINED/(iv) Goods of Undertenants, Lodgers and Strangers/961. Payment to constitute rent.

961. Payment to constitute rent.

For the purposes of the recovery of any sums payable by an undertenant¹ or lodger² to a superior landlord³ under a notice⁴ or under the undertaking⁵, the undertenant or lodger is deemed to be the immediate tenant⁶ of the superior landlord, and the sums payable are deemed to be rent; but, where the undertenant or lodger has, in pursuance of such a notice or undertaking, paid any sums to the superior landlord, he may deduct that amount from any rent due, or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorised to be levied) from whose rent a deduction has been made in respect of such payment may make the like deductions from any rent due or which may become due from him to his immediate landlord⁷.

1 As to the meaning of 'undertenant' see PARA 951 note 2 ante.

2 As to lodgers see PARA 953 ante.

3 As to the meaning of 'superior landlord' see PARA 956 note 1 ante.

4 See PARA 960 ante.

5 See PARA 956 ante.

6 As to the meaning of 'tenant' see PARA 951 note 4 ante.

7 Law of Distress Amendment Act 1908 s 3. The superior landlord, if this notice is not acted upon, is apparently entitled to distrain on the undertenant or lodger direct.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(5) WHEN DISTRESS MAY BE MADE/962. Earliest time for distress.

(5) WHEN DISTRESS MAY BE MADE

962. Earliest time for distress.

A landlord may not distrain until rent is in arrear, that is, until it is ascertained, due, and unpaid¹. Rent, although previously demandable, is not actually due until the last instant of the due day, so that the earliest period at which a distress for rent may be made is on the day following that on which it falls due². Rent is prima facie not due until the end of each year of a term, but in practice the due date is generally provided by agreement³ and by this means, or by custom, rent may be payable in advance, so that in default of payment distress is legitimate at the beginning of each quarter or other period⁴. If rent is only payable on a condition precedent, it cannot be distrained for until the condition is fulfilled⁵. Agreement may also postpone the right to distress⁶, but to negative the common law right express words must be inserted. An affirmative special right of distress does not oust the common law right⁷.

In certain cases the leave of the court must be obtained before the right of distress can be exercised: namely, in the case of a dwelling house let on a protected tenancy or subject to a statutory tenancy⁸, or in the case of a dwelling house let on an assured tenancy⁹, and in certain cases where the tenant is a serviceman not serving under a regular engagement or is the dependant of such a serviceman¹⁰.

1 3 Bl Com (14th Edn) 6-7.

2 Co Litt 47b; Com Dig, Distress (A2); *Clun's Case* (1613) 10 Co Rep 127a; *Duppa v Mayo* (1669) 1 Wms Saund 275 at 287; *Lord Rockingham v Oxenden* (1711) 2 Salk 578; *Cutting v Derby* (1776) 2 Wm Bl 1075 at 1077 per Blackstone J; *Leftley v Mills* (1791) 4 Term Rep 170 at 174; *Dibble v Bowater* (1853) 2 E & B 564.

3 See LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 242 et seq.

4 *Lee v Smith* (1854) 9 Exch 662; *Buckley v Taylor* (1788) 2 Term Rep 600 (where a custom was proved that a half-year's rent was payable on the day of the tenant's entry into possession). See also *Walsh v Lonsdale* (1882) 21 ChD 9, CA; and PARA 911 ante.

5 *Mechelen v Wallace* (1836) 7 Ad & El 54n (house to be furnished); *Giles v Spencer* (1857) 3 CBNS 244 (receipts for rent due to superior landlord to be produced); *Fox v Slaughter* (1919) 35 TLR 668 (repairs to be done).

6 *Giles v Spencer* (1857) 3 CBNS 244; *Horsford v Webster* (1835) 1 Cr M & R 696; and see PARAS 950 text to notes 3-7 ante, 968 text to note 8, 978 post.

7 *Re River Swale Brick and Tile Works Ltd* (1883) 52 LJ Ch 638.

8 See the Rent Act 1977 s 147(1); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 282.

9 See the Housing Act 1988 s 19(1); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 282.

10 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 2(2)(a), 3; and ARMED FORCES vol 2(2) (Reissue) PARAS 81, 85. As to the procedure on application see ARMED FORCES. If, on an application, the court is of the opinion that the tenant is unable to pay the rent owing to relevant service, the court may refuse leave to distrain or give leave subject to such restrictions and conditions as the court thinks proper: see s 2(4); and ARMED FORCES vol 2(2) (Reissue) PARA 81. As to the discretion of the court in relation to the order which may be made see *Metropolitan Properties Co Ltd v Purdy* [1940] 1 All ER 188, CA; cf *Blanket v Palmer* [1940] 1 All ER 524, CA (decisions under the Courts (Emergency Powers) Act 1939 (repealed)).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(5) WHEN DISTRESS MAY BE MADE/963. Distress at night or on Sunday.

963. Distress at night or on Sunday.

Distress for rent may not be made at night¹. Night for this purpose is the interval between sunset and sunrise, and not between dusk and daybreak², and, if necessary, the time of sunset and sunrise must be proved as a fact³. A landlord who prevents removal by a third party during the night so that he may distrain in the morning is not guilty of conversion⁴, though he may be liable in trespass⁵. It was in the past held that a distress may not take place on a Sunday⁶, although a distress for rent due on a Sunday may be levied on the Monday following⁷.

1 Co Litt 142a; Com Dig, Distress (A 2); *Aldenburgh v Peaple* (1834) 6 C & P 212; *Lamb v Wall* (1859) 1 F & F 503.

2 *Tutton v Darke* (1860) 5 H & N 647; *Nixon v Freeman* (1860) 5 H & N 647, 652. It has been held that the levying of distress after sunset is an irregularity which may be waived by the tenant: *Werth v London and Westminster Loan and Discount Co* (1889) 5 TLR 521 at 522, DC; but see the criticism of this decision in *Perring & Co v Emerson* [1906] 1 KB 1 at 6 per Wills J.

3 *Collier v Nokes* (1849) 2 Car & Kir 1012. As to the power of the court to control evidence see CPR 32.1.

4 *England v Cowley* (1873) LR 8 Exch 126.

5 *England v Cowley* (1873) LR 8 Exch 126 at 132 per Kelly CB.

6 See *Werth v London and Westminster Loan and Discount Co* (1889) 5 TLR 521, DC; and see the Sunday Observance Act 1677 s 6 (repealed).

7 *Child v Edwards* [1909] 2 KB 753.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(5) WHEN DISTRESS MAY BE MADE/964. When a demand is necessary.

964. When a demand is necessary.

The making of a distress in itself constitutes a demand, so that an actual previous demand is generally unnecessary, but by agreement it may be provided that no distraint may be made without a previous demand, or only at a fixed or reasonable time after demand¹. A demand in fact is also requisite in the case of a penal rent, or where the time for payment is at the election of the landlord, although on the construction of the agreement no interval need necessarily intervene between demand and the levy².

¹ *Browne v Dunnery* (1618) Hob 208; *Kind v Ammery* (1619) Hut 23; *Witty v Williams* (1864) 12 WR 755; and see PARA 911 ante.

² *Mallam v Arden* (1833) 10 Bing 299 (prima facie the tenant by his bargain ought to be at hand to pay his rent when due); and see *Clarke v Holford* (1848) 2 Car & Kir 540; *Williams v Holmes* (1853) 8 Exch 861; *London and Westminster Loan and Discount Co v London and North Western Rly Co* [1893] 2 QB 49 (where the effect of a provision that rent was to be paid in advance if required was considered).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(5) WHEN DISTRESS MAY BE MADE/965. Statutory distress after expiration of term.

965. Statutory distress after expiration of term.

Distress may be made for any rent in arrear or due upon any lease after the determination of that lease in the same manner as it might have been made but for the determination of the lease whether the lease is for years, or for years determinable on the dropping of a life¹, or at will² provided that the distress is made within six calendar months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due³.

The possession in question must be that of the tenant, unless an executor or administrator enters on the land as his representative during the term and holds over; mere continuance of occupation by a testator's wife or servant does not constitute a possession by the tenant within the meaning of the statute, even if the wife or other occupier becomes the representative of the late tenant after a distress⁴. In any event the statutory provisions⁵ cannot apply to a tenancy at will which has been determined by the tenant's death⁶.

The statutory provisions do not apply where a new tenancy is created between the same parties before or at the expiration of the old tenancy, even if the new tenancy relates only in part to the original premises, for there cannot be two concurrent rights of distress; the test is whether the tenant continues in possession under a new right and title or not⁷. A mere holding over after a notice to quit does not imply a new tenancy in the absence of payment of rent or some other overt act⁸. There is no new tenancy where a tenant gives up possession of land but is permitted to occupy the house without paying rent until the landlord requires it⁹.

The statutory provisions do not apply where an end has been put to the tenancy by a tenant's own wrongful disclaimer or by forfeiture¹⁰, but do apply where the tenancy has been determined by lapse of time, and, probably, where the tenancy has been determined, by notice to quit¹¹. The continuance of the possession of the tenant which is necessary for the enactments to apply need not be tortious¹², and is not confined to a holding over of the whole of the premises, though where the tenant remains in possession of part, distress must be made on the part of which possession is retained¹³. If the landlord treats the occupier as a trespasser he cannot afterwards distrain¹⁴.

Possession by the tenant after determination of the term is evidenced by the keeping of the premises as the party's own, to the exclusion of other people. A small thing, if left on the premises, with a view to maintaining the tenant's retention of possession, will serve, but the mere fact of part or of the whole of the tenant's goods being left on the demised premises does not in itself conclusively indicate that the tenant is continuing in possession¹⁵.

1 See the Law of Property Act 1925 s 149(6) (as amended); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 240.

2 See the Landlord and Tenant Act 1709 s 6 (amended by the Statute Law Revision Act 1948). Before the Landlord and Tenant Act 1709 it was usual to provide that the last half-year's rent should be paid on some day before the determination of the lease, so as to enable the landlord to distrain before the removal of the tenant: see Co Litt 47b.

3 Landlord and Tenant Act 1709 s 7; and see *Beavan v Delahay* (1788) 1 Hy Bl 5. The Landlord and Tenant Act 1709 s 6 (as amended) and s 7 are confined to cases between landlord and tenant, and have no application to the case of a claim by an execution creditor: *Lewis v Davies* [1914] 2 KB 469, CA.

4 *Braithwaite v Cooksey* (1790) 1 Hy Bl 465; *Turner v Barnes* (1862) 2 B & S 435.

5 le the Landlord and Tenant Act 1709 s 6 (as amended) and s 7: see the text to notes 2-3 supra.

6 *Turner v Barnes* (1862) 2 B & S 435; and see *Scobie v Collins* [1895] 1 QB 375 at 377 per Vaughan Williams J.

7 *Wilkinson v Peel* [1895] 1 QB 516.

8 *Jenner v Clegg* (1832) 1 Mood & R 213; *Alford v Vickery* (1842) Car & M 280; but see *Tayleur v Wildin* (1868) LR 3 Exch 303 (where the new tenancy was created in spite of a notice to quit). As to the effect of payment and acceptance of rent after notice to quit see *Clarke v Grant* [1950] 1 KB 104, [1949] 1 All ER 768, CA; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 213 et seq.

9 *Lewis v Davies* [1913] 2 KB 37; revsd on other grounds [1914] 2 KB 469, CA.

10 *Doe d David v Williams* (1835) 7 C & P 322; *Grimwood v Moss* (1872) LR 7 CP 360 at 365 per Willes J; *Kirkland v Briancourt* (1890) 6 TLR 441; and cf *Murgatroyd v Silkstone and Dodsworth Coal and Iron Co Ltd, ex p Charlesworth* (1895) 65 LJ Ch 111 (where the landlords had entered into possession of the demised property in pursuance of an order of the court).

11 See *Williams v Stiven* (1846) 9 QB 14.

12 *Nuttall v Staunton* (1825) 4 B & C 51; *Taylerson v Peters* (1837) 7 Ad & El 110 at 114 per Patteson J; *Gray v Stait* (1883) 11 QBD 668 at 673, CA, per Cotton LJ; and see *Lewis v Davies* [1913] 2 KB 37 at 43 per Channell J (on appeal [1914] 2 KB 469, CA).

13 *Nuttall v Staunton* (1825) 4 B & C 51.

14 *Bridges v Smyth* (1829) 5 Bing 410.

15 See *Taylerson v Peters* (1837) 7 Ad & El 110; *Gray v Stait* (1883) 11 QBD 668 at 673, CA, per Bowen LJ; *Aston v Williams* (1910) 45 L Jo 273 (tenant's return to pick apples).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(5) WHEN DISTRESS MAY BE MADE/966. Continuing possession.

966. Continuing possession.

Where, by custom or agreement, the interest and connection between the landlord and the tenant is extended beyond the term, and for this purpose the possession of the tenant is allowed to continue, the tenancy is by such custom or agreement so far prolonged during such further possession as to allow the landlord to distrain¹. When a tenant, under statute², holds over in lieu of emblements, the rent may be recovered by distress³.

Tenancies to which Part II of the Landlord and Tenant Act 1954⁴ applies do not come to an end unless terminated in accordance with the provisions of that Part of the Act⁵. It would appear that the landlord retains the right of distress while the tenant remains in possession and the tenancy continues under that Act⁶.

1 *Beavan v Delahay* (1788) 1 Hy Bl 5; *Lewis v Harris* (1778) 1 Hy Bl 7n; *Boraston v Green* (1812) 16 East 71; *Knight v Benett* (1826) 3 Bing 364; *Griffiths v Puleston* (1844) 13 M & W 358; and see AGRICULTURAL LAND vol 1 (2008) PARA 368. For a case as to continuing possession after expiration of the term under a tenant right see *Re Powers, Manisty v Archdale* (1890) 63 LT 626; and PARA 968 note 7 post.

2 Ie under the Agricultural Holdings Act 1986 s 21 (repealed).

3 *Haines v Welch* (1868) LR 4 CP 91.

4 Ie the Landlord and Tenant Act 1954 ss 23-46 (as amended).

5 See *ibid* s 24(1) (as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 720.

6 The effect of *ibid* s 24(1) (as amended) is to continue the tenants' common law tenancy with a statutory variation as to the mode of determination: *HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd* [1957] 1 QB 159, [1956] 3 All ER 624, CA. See further LANDLORD AND TENANT.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(5) WHEN DISTRESS MAY BE MADE/967. Exclusion of distress after expiration of tenancy.

967. Exclusion of distress after expiration of tenancy.

Except in the cases already stated¹, a landlord is not entitled to distrain after the expiration of the term or tenancy, even though the tenant continues in occupation after notice to quit has expired².

¹ See PARAS 965-966 ante.

² Co Litt 47b; Com Dig, Distress (A2) ('for he is not in, in privity of the lease'); *Pennant's Case* (1596) 3 Co Rep 64a; *Williams v Stiven* (1846) 9 QB 14; *Turner v Barnes* (1862) 2 B & S 435 at 450. In *Stanfill v Hickes* (1697) 1 Ld Raym 280, a lease for a year and thereafter from year to year was construed as a lease for two years and thereafter a tenancy at will; the landlord was held not to be entitled to distrain after the expiration of two years for rent due for the second year, on the ground that the original tenancy had terminated. In such a case, however, the tenant would now be treated as holding under the original tenancy so long as he remained in possession and his tenancy was not determined by notice: see eg *Legg v Strudwick* (1708) 2 Salk 414 (where it was held that the lessor might distrain in the third year for the rent of the second); *Birch v Wright* (1786) 1 Term Rep 378 at 380; *Cattley v Arnold*, *Banks v Arnold* (1859) 1 John & H 651 at 660; para 912 note 4 ante; and LANDLORD AND TENANT.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/968. Restraint and suspension of right to distrain.

(6) LOSS OF THE RIGHT TO DISTRAIN

968. Restraint and suspension of right to distrain.

The assignment by the landlord of his reversion (including the assignment for a limited duration by the grant of a concurrent term) destroys the assignor's remedy of distress for arrears of rent due at the date of assignment¹.

In the case of tenancies granted before 1 January 1996, by statute rent reserved by a lease is annexed and incident to and goes with the reversionary estate in the land². By virtue of this statutory provision the assignee of the reversion may sue for rent in arrear at the date of the assignment and may distrain for such rent³.

In the case of tenancies granted on or after 1 January 1996, the assignee of the reversion becomes entitled to the benefit of the tenant's covenant for rent as from the assignment but does not have any right to sue for rent in relation to any time falling before the assignment⁴ (unless the right is expressly assigned) but the benefit of a right of re-entry passes on assignment⁵. Accordingly (at least in the absence of an express assignment of the benefit of rent) the assignee of the reversion has no right to distrain for rent falling due before the assignment.

Further, the right of distress is not taken away by a mere agreement by a person to sell or assign his reversionary interest in the premises⁶; but after a sale and payment of the purchase money, and before a conveyance of the property, the vendor is a trustee for the purchaser, and, although he has the legal estate and therefore the right to distrain, he will be restrained from exercising his legal right in such a way as to prejudice the purchaser⁷. A contract by the landlord to sell the freehold of the premises to the tenant suspends the right of distress pending completion⁸.

¹ See PARA 912 ante.

² See the Law of Property Act 1925 s 141 (re-enacting, with modifications in wording, the Conveyancing Act 1881 s 10); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 567.

³ *London and County (A & D) Ltd v Wilfred Sportsman Ltd* [1971] Ch 764, [1970] 2 All ER 600, CA; *Arlesford Trading Co Ltd v Servansingh* [1971] 3 All ER 113, [1971] 1 WLR 1080, CA.

Before 1881 (ie before the enactment of the Conveyancing Act 1881: see note 2 supra), it had been decided that an assignee had title to the next rent due after the assignment but not to the antecedent rent (see *Flight v Bentley* (1835) 7 Sim 149) but that case was overruled by *London and County (A & D) Ltd v Wilfred Sportsman Ltd* supra at 784 and 606 per Russell LJ. It would also appear that any other pre-1881 decision in so far as it may indicate that a disposition by the landlord of a reversion of a lease destroys the remedy for distress for arrears of rent due at the date of the disposition (see eg *Smith v Day* (1837) 2 M & W 684; *Stavely v Allock* (1851) 16 QB 636) is no longer good law (see *Re King, Robinson v Gray* [1963] Ch 459 at 490, [1963] 1 All ER 781 at 793, CA, per Upjohn LJ).

⁴ See the Landlord and Tenant (Covenants) Act 1995 s 3(3); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 580.

⁵ See *ibid* s 23; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 580.

⁶ *Manchester Brewery Co v Coombs* [1901] 2 Ch 608.

⁷ *Re Powers, Manisty v Archdale* (1890) 63 LT 626.

8 *Ellis v Wright* (1897) 76 LT 522. See also PARA 978 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/969. Effect of grant of future lease.

969. Effect of grant of future lease.

A future lease takes effect without actual entry, but only from the date of commencement of the term¹. Hence, if the future lease is granted to a third person, it still does not amount to a parting with the reversion, so as to take away the lessor's right of distress until the term of the future lease commences²; while, if it is granted to the first lessee, it operates as an extension of his term³.

1 See the Law of Property Act 1925 s 149(2); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 118. See also s 149(1), which abolished the doctrine of 'interesse termini', ie the rule that a lessee had to perfect his title by entry and until then had no estate in the land: see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 140. A term, at a rent or granted in consideration of a fine, must be limited to take effect not more than 21 years from the date of the instrument creating it, otherwise it is void: see s 149(3); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 106.

2 Not only is the effect of the future term postponed until its commencement (see the text and note 1 supra), but it is expressly provided that nothing in ibid s 149(1), (2) is prejudicially to affect the right of any person to recover any rent: see s 149(4); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 118. The rule formerly laid down that the grant of a future lease to a third party did not amount to a parting with the reversion (see *Smith v Day* (1837) 2 M & W 684) consequently remains in force despite the abolition of the doctrine of 'interesse termini'.

3 Cf *Lord Llangattock v Watney, Combe, Reid & Co Ltd* [1910] AC 394, HL; *Knight v City of London Brewery Co* [1912] 1 KB 10 (where the addition of a reversionary term to a term in possession was not allowed). The effect of these cases is preserved for terms or interests created before 1 January 1926 by the Law of Property Act 1925 s 149(4): see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 118.

The addition of the future term to the present term prevents the right of distress being lost in circumstances such as occurred in *Lewis v Baker* [1905] 1 Ch 46.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/970. By determination of lessor's interest.

970. By determination of lessor's interest.

Where the lessor is himself only a termor¹ his right to distrain ceases with the determination of his interest²; and where the lessor has only some other defeasible interest the expiration of that interest determines his right to distrain³.

1 le a tenant for a term of years. See also PARA 914 ante.

2 *Burne v Richardson* (1813) 4 Taunt 720.

3 *Hopcraft v Keys* (1833) 9 Bing 613.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/971. By expiration of the tenancy.

971. By expiration of the tenancy.

The common law right to distrain expires with the tenancy¹. This right is extended by statute for six months after the determination of the tenancy provided that the landlord's title continues and the tenant remains in possession. The statutory provision does not, however, apply where a new tenancy is created between the same parties before or at the expiration of the old tenancy².

1 See PARA 967 ante.

2 See PARA 965 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/972. By surrender of the reversion.

972. By surrender of the reversion.

When the reversion is surrendered or merges, the rent, so far as regards the person who was entitled to that reversion becomes extinguished, and his right of distress for arrears due at the date of the surrender or merger is lost¹. Where, however, a lease out of which underleases have been derived is surrendered for the purpose of a renewal, the lessor granting the new lease and any person deriving title under him is entitled to the same remedy by distress or entry on the land comprised in any underlease for rent reserved by the new lease (so far as that rent does not exceed the rent reserved by the original lease) as he would have had if: (1) the original lease had remained on foot; or (2) a new underlease derived out of the new lease had been granted to the underlessee or person deriving title under him². In the case of any other surrender or merger the estate which, as against the underlessee, confers the next vested right to the land, will become the reversion on the underlease, with all incidents, including the right of distress³.

¹ *Webb v Russell* (1789) 3 Term Rep 393; *Threr v Barton* (1570) Moore KB 94; *Thorn v Woollcombe* (1832) 3 B & Ad 586.

² Law of Property Act 1925 s 150(5) (replacing provisions of the Landlord and Tenant Act 1730 s 6 (repealed)); and see *Doe d Palk v Marchetti* (1831) 1 B & Ad 715 at 721.

³ See the Law of Property Act 1925 s 139; and *Ecclesiastical Comrs for England v Treemer* [1893] 1 Ch 166.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/973. By payment of the rent.

973. By payment of the rent.

Payment of the rent or its equivalent extinguishes the right to distrain¹. In certain cases the giving of a bill of exchange or promissory note for rent has been treated as not affecting the landlord's right to distrain². The giving of a bill of exchange or promissory note is, however, some evidence of an agreement by the landlord to suspend his remedy by distress during the currency of the bill or note³. An unsatisfied judgment on the bill will not interfere with the right of distress⁴, but it will be otherwise if the landlord discounts the bill⁵. The remedy by distress is not affected by an agreement to take interest on the arrears⁶. Payment by a third party does not extinguish the right to distrain unless the third party makes it as agent for or in the name and on account of the tenant⁷.

1 As to setting off payments on behalf of the landlord see PARA 984 post.

2 *Davis v Gyde* (1835) 2 Ad & El 623; *Harris v Shipway* (1744) Bull NP (7th Edn) 182a; and see *Bolt and Nut Co (Tipton) Ltd v Rowlands, Nicholls & Co Ltd* [1964] 2 QB 10 at 22, [1964] 1 All ER 137 at 142, CA, per Danckwerts LJ; and CONTRACT vol 9(1) (Reissue) PARA 954. As to bills of exchange see generally FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1400 et seq.

3 *Palmer v Bramley* [1895] 2 QB 405, CA. For the general rule that the giving of a negotiable instrument will, in the absence of evidence to the contrary, be treated as conditional payment see CONTRACT vol 9(1) (Reissue) PARA 951. Where a lease provides that the tenant is to 'pay' a yearly rent, evidence is not admissible of a prior parol agreement that the lessor is to accept bills of exchange for rent as it falls due: *Henderson v Arthur* [1907] 1 KB 10, CA; and see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 185. In *R v Locker* [1971] 2 QB 321, [1971] 2 All ER 875, CA, it was decided that the landlord, who had been given a worthless cheque by his tenant, had not been caused to accept a deferment of payment of the rent within the meaning of the Theft Act 1968 s 16(2)(a) (as originally enacted). As to obtaining a pecuniary advantage by deception see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 312.

4 *Drake v Mitchell* (1803) 3 East 251 (note or bill operating as collateral security); *Wegg Prosser v Evans* [1895] 1 QB 108, CA. As to the effect of a judgment for the rent see PARA 974 post.

5 *Parrott v Anderson* (1851) 7 Exch 93.

6 *Skerry v Preston* (1813) 2 Chit 245.

7 *Smith v Cox* [1940] 2 KB 558, [1940] 3 All ER 546.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/974. By judgment for the rent.

974. By judgment for the rent.

If the landlord recovers judgment for the rent, even though it is unsatisfied, the remedy by distress is lost, since the rent is merged in the judgment¹.

¹ *Chancellor v Webster* (1893) 9 TLR 568; *Potter v Bradley & Co* (1894) 10 TLR 445 at 446. Contrast the cases in para 973 note 4 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/975. By tender of rent.

975. By tender of rent.

According to the stage at which it is made, tender of the rent, with any appropriate costs, will deprive the landlord either of the right to distrain or to pursue further the remedy by distress¹. Thus a tender to the landlord, or his authorised agent, by the tenant or his agent of the rent without any costs² (even though the landlord has incurred costs) before seizure, extinguishes the right to distrain, and makes the subsequent distress illegal³. A tender after distress taken, but before it is impounded⁴ or removed, of the rent and costs of the distress makes the subsequent removal or detainment unlawful⁵. Even after impounding, a tender of the rent and the proper costs of the distress made within the time allowed for replevying makes a subsequent sale of the distress irregular⁶. In the case of growing crops seized under the statutory power⁷, a payment or tender made before the crops are ripe and cut or gathered puts an end to the distress⁸.

When a landlord after a lawful distress and impounding accepts the rent in arrear and the charges of distress, he is not liable for merely retaining possession of the goods, but if he actually refuses to deliver them up to the tenant, he will be liable for conversion⁹.

1 As to the effect of tenders see generally CONTRACT vol 9(1) (Reissue) PARA 971 et seq. As to remedies for illegal, unlawful or irregular distress see PARA 1090 et seq post.

2 There is no authority that a person intending to distrain is entitled to any costs before he has actually distrained: *Bennett v Bayes* (1860) 5 H & N 391 at 398 per Bramwell B.

3 *Bennett v Bayes* (1860) 5 H & N 391; *Branscomb v Bridges* (1823) 1 B & C 145; *Bird v Hildage* [1948] 1 KB 91, [1947] 2 All ER 7, CA.

4 As to impounding see PARA 1013 et seq post.

5 *Loring v Warburton* (1858) EB & E 507; *Vertue v Beasley* (1831) 1 Mood & R 21; *Six Carpenters' Case* (1610) 8 Co Rep 146a, 1 Smith LC (13th Edn) 134; *Evans v Elliott* (1836) 5 Ad & El 142.

6 *Johnson v Upham* (1859) 2 E & E 250; and see PARA 1046 post. As to replevin see PARA 1081 et seq post.

7 Ie under the Distress for Rent Act 1737: see PARA 929 ante.

8 See *ibid* s 9; and *Owen v Legh* (1820) 3 B & Ald 470.

9 *West v Nibbs* (1847) 4 CB 172. As to conversion see TORT.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/976. Mode of tender.

976. Mode of tender.

The tender may be made to the landlord himself notwithstanding the fact that he has authorised a broker to distrain and left the matter in his hands¹, or to his agent authorised to receive the rent though such agent has delivered a distress warrant to the bailiff², and tender may be made to the bailiff authorised to distrain though his employer may have instructed him not to receive the rent³. Tender to a mere person in possession who is not the bailiff holding the warrant to distrain is not good⁴.

The tender need not be made by the tenant; it may be made by a third person with the tenant's prior authority or subsequent ratification; but if a stranger, without any interest in the property, voluntarily tenders the rent, the landlord is not bound to receive it⁵, though the subsequent adoption of the act by the tenant would make the tender valid. Where rent is to be paid in cash, tender of a cheque by the tenant is not sufficient and may be refused by the landlord⁶.

The tender must be of the proper amount and be made unconditionally, so that the landlord may accept it without prejudice to his right to recover more if actually due⁷. The question of whether or not a tender was made unconditionally is one of fact⁸. Accompanying words which do not require the landlord to make any admission as to the amount of rent due as a condition of its receipt do not amount to a conditional tender⁹.

Thus a tender of a sum if the claimant, who claimed a larger sum, would accept it in full satisfaction¹⁰, and a tender of a quarter's rent with a demand for a receipt to a particular day (it being in dispute whether one or two quarters' rent was due¹¹), have been held to be invalid tenders. On the other hand, the tender of a particular sum merely as being the amount due for rent which was in dispute¹² and a tender under protest¹³ have been held to be unconditional tenders.

1 *Smith v Goodwin* (1833) 4 B & Ad 413.

2 *Bennett v Bayes* (1860) 5 H & N 391. As to bailiffs see PARA 992 et seq post; and as to warrants for distress see PARA 992 et seq post.

3 *Hatch v Hale* (1850) 15 QB 10.

4 *Boulton v Reynolds* (1859) 2 E & E 369.

5 Co Litt 206b; *Watkins v Ashwicke* (1585) Cro Eliz 132.

6 See *Official Solicitor v Thomas* [1986] 2 EGLR 1, CA.

7 *Finch v Miller* (1848) 5 CB 428. See CONTRACT vol 9(1) (Reissue) PARA 974 et seq.

8 *Eckstein v Reynolds* (1837) 7 Ad & El 80; *Marsden v Goode* (1845) 2 Car & Kir 133.

9 *Bowen v Owen* (1847) 11 QB 130; *Bull v Parker* (1842) 2 Dowl NS 345; *Jones v Bridgman* (1878) 39 LT 500.

10 *Evans v Judkins* (1815) 4 Camp 156.

11 *Finch v Miller* (1848) 5 CB 428; cf *Richardson v Jackson* (1841) 8 M & W 298.

12 *Bowen v Owen* (1847) 11 QB 130 ('I have sent £26 5s 7½d to settle one year's rent of N'); *Jones v Bridgman* (1878) 39 LT 500 ('Here is your quarter's rent'), disapproving *Marquis of Hastings v Thorley* (1838) 8

C & P 573 (where it was held that a tender of '£21 in payment of the half-year's rent due at Lady Day' was bad because by accepting it the other party would admit that the sum was the amount of a half-year's rent).

13 *Scott v Uxbridge and Rickmansworth Rly Co* (1866) LR 1 CP 596; *Greenwood v Sutcliffe* [1892] 1 Ch 1, CA; *Manning v Lunn* (1845) 2 Car & Kir 13.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/977. Second distress.

977. Second distress.

A distress is, ordinarily, a bar to a second distress for the same rent¹.

¹ As to the circumstances in which a second distress is possible see PARAS 1059-1062 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(6) LOSS OF THE RIGHT TO DISTRAIN/978. Agreement not to distrain.

978. Agreement not to distrain.

The right to distrain may be lost, postponed, or suspended by an express or implied agreement by the landlord not to distrain, or by conduct on the part of the landlord inducing the owner of chattels to believe that he will not take them under a distress¹.

¹ See PARAS 950, 962 text to notes 6-7, 968 text to note 8 ante. See also *Oxenham v Collins* (1860) 2 F & F 172; *Miles v Furber* (1873) LR 8 QB 77; *Papé v Westacott* [1894] 1 QB 272 at 280, 282, CA. An agreement to accept a less rent for a time on payment of certain instalments did not prevent a distress for the full rent on default (*Re Smith and Hartogs, ex p Official Receiver* (1895) 73 LT 221); mere failure by the landlord to exercise his rights on a number of occasions when rent falls into arrear does not bind him for the future so as to disentitle him to insist on punctual payment (*Bird v Hildage* [1948] 1 KB 91 at 96, [1947] 2 All ER 7 at 10, CA).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(7) WHERE DISTRESS MAY BE MADE/979. General rule.

(7) WHERE DISTRESS MAY BE MADE

979. General rule.

The general rule is that a distress can only be made of goods found upon some part of the premises out of which the rent issues¹. This, however, does not exclude a distress on that part, if any, of a public highway which by presumption of law is included in the demise².

Goods upon any part of the demised premises may be distrained for the whole rent³. If, however, several parcels of property are let to the same person by separate demises at separate rents, though in the same deed, a joint distress cannot be made on any one parcel for more than the rent which issues out of that parcel, though all are in arrear⁴. If there is rent due on each parcel, and no more is taken on each than is due in respect of each, the distress is regular⁵.

1 *Capel v Buszard* (1829) 6 Bing 150, Ex Ch; and see *Lewis v Read* (1845) 13 M & W 834. This is the common law rule, enforced by 52 Hen 3 (Statute of Marlborough) (1267) c 15, by which it is made unlawful for any person (except the Crown or its officers) to make a distress out of his fee or on the Queen's highway or in the common street.

2 *Hodges v Lawrence* (1854) 18 JP 347; *Gillingham v Gwyer* (1867) 16 LT 640; and see BOUNDARIES vol 4(1) (2002 Reissue) PARA 920; DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 232; HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 758, 913.

3 *Hargrave v Shewin* (1826) 6 B & C 34.

4 *Rogers v Birkmire* (1736) 2 Stra 1040. See also PARA 983 post.

5 *Phillips v Whitsed* (1860) 2 E & E 804 at 809.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(7) WHERE DISTRESS MAY BE MADE/980. Exceptions.

980. Exceptions.

To the general rule¹ there are four exceptions:

- 9 (1) by agreement between the parties the landlord may distrain on goods on other lands than those out of which the rent issues²;
- 10 (2) a landlord may distrain for arrears of rent the cattle or stock of his tenant feeding upon any common appendant or appurtenant or in any way belonging to the premises demised³;
- 11 (3) if the landlord coming to distrain sees the tenant's cattle on the premises, and the tenant to prevent the distress drives them off the premises, the landlord may make fresh pursuit and seize them in the highway or in any other place off the lands demised; if, however, the cattle of their own accord go out of the lands demised or into the highway within his view, he cannot pursue them; neither can he if they are driven off the lands for any other purpose than to avoid distress⁴;
- 12 (4) where the tenant fraudulently or clandestinely removes his goods or chattels from the demised premises to prevent the landlord from distraining them for arrears of rent, the landlord or his agent may, within 30 days after the removal of the goods, seize them as a distress wherever they may be found⁵, provided they have not previously been sold bona fide and for valuable consideration to a person not privy to the fraud⁶.

1 See PARA 979 ante.

2 *Daniel v Stepney* (1874) LR 9 Exch 185, Ex Ch; *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA (a mining lease). However, such a power may, it seems, be within the Bills of Sale Act 1878 ss 4, 6 (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1638, 1648, 1652-1653), if the property over which the power is given is unconnected with the demised premises (*Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* supra at 392, 396, 399). As to the exercise of an express power of distress see PARA 911 text to note 9 ante.

3 See the Distress for Rent Act 1737 s 8 (as amended); and PARAS 1014, 1019, 1053 post.

4 Co Litt 161a.

5 See the Distress for Rent Act 1737 s 1 (as amended); and PARA 1063 post. Cf the right in cases of execution to enter premises of strangers discussed in *Southam v Smout* [1964] 1 QB 308, [1963] 3 All ER 104, CA.

6 See the Distress for Rent Act 1737 s 2; and PARA 1014 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/981. Amount leviable.

(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE

981. Amount leviable.

Apart from statutory restriction¹, the amount of rent for which a distress may be levied is dependent upon the terms of the reddendum in the lease². That which according to the terms of the reservation has become an ascertained part of the rent to be paid for the use of the land, and which is unsatisfied either in whole or in part at the time of the levy, may be distrained for to the extent to which it is unsatisfied³.

1 See PARAS 986-987, 989 post.

2 *Townsend v Charlton*[1922] 1 KB 700, DC.

3 As to rent in respect of period of possession before granting of lease see *M'Leish v Tate* (1778) 2 Cowp 781 at 784.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/982. Fluctuating rents.

982. Fluctuating rents.

There is nothing to prevent distress in respect of rent which may fluctuate, for instance pursuant to a rent review clause or because it is reserved on account of service charges¹. However, where the reddendum provides for a method of ascertaining the rent but the rent has not yet been ascertained, distress cannot take place: the rent can only be distrained for when it is certain and in arrear².

¹ See PARA 910 ante.

² *Concorde Graphics Ltd v Andromeda Investments SA* [1983] 1 EGLR 53, (1982) 265 Estates Gazette 386; *Eren v Tranmac Ltd* [1997] 2 EGLR 211, CA. As to the requirement that the rent must be certain see PARA 610 ante; and as to the requirement that the rent must be in arrear see PARA 911 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/983. Distress for distinct rents to be separate.

983. Distress for distinct rents to be separate.

The form of the demise, or the existence of a succession of demises, may make what was apparently one rent, or an accumulation of arrears of the same rent, distinct rents. There may not be a joint distress for several rents reserved under separate demises of different properties to the same tenant, even though the demises are contained in one document¹. If the lessor on the termination of a demise lets again to the same tenant, he loses his right to distrain for arrears of rent under the original demise, for at common law a landlord is not entitled to distrain after the expiration of the term², even when the same tenant remains in possession³, and the statutory exception where the tenant remains in possession does not apply where a new tenancy is created between the same parties⁴. For this purpose, a tenancy from year to year or other periodic tenancy is treated as one entire tenancy so long as it continues, and not as a succession of tenancies⁵.

On the other hand, although there may be one distress for any number of instalments of rent reserved by the same demise, those instalments may be separately distrained for, and it is immaterial in what order⁶.

1 *Rogers v Birkmire* (1736) 2 Stra 1040. See also PARAS 979 ante, 1059 post.

2 See PARA 967 ante.

3 *Stanfill v Hickes* (1697) 1 Ld Raym 280.

4 See PARA 965 ante.

5 See PARAS 912 note 4, 967 note 2 ante.

6 *Palmer v Stanage* (1661) 1 Lev 43; *Gambrell v Earl of Falmouth* (1835) 4 Ad & El 73. If, however, the rent is one entire rent due on one day, the whole must be distrained for at the same time, if there are sufficient chattels to satisfy it: *Bagge v Mawby* (1853) 8 Exch 641. See further PARA 1059 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/984. Part payment and deductions.

984. Part payment and deductions.

The amount for which a landlord may distrain may have been satisfied in part by payments made before the levy. These may be either payments made to the landlord himself¹ or payments made on his behalf and with his express or implied authority. Thus where the tenant has paid on behalf of the landlord sums which it was the landlord's duty to pay and which are charged upon the land, so that the failure to pay them would prevent the tenant's peaceable possession of the property, the tenant is considered as authorised by the landlord to make such payments and treat them as made in satisfaction or part satisfaction of the rent, so that the landlord can only distrain for the balance, if any².

The amount for which the landlord may distrain may also be reduced to the extent of any sums paid or expended by the tenant which the tenant is by statute or by the terms of the lease entitled to deduct from rent.

Where, however, the right conferred by a statute to deduct any payment under the statute from rent is expressed thereby to be subject to any agreement between the landlord and tenant, the right of the tenant to make the deduction will depend on the terms of the lease³.

Where by a lease the tenant is expressly authorised to deduct from rent sums expended or paid for particular purposes, the landlord can distrain only for the balance of the rent⁴.

1 See PARA 973 ante.

2 See eg *Graham v Allsopp* (1848) 3 Exch 186 at 198; *Sapsford v Fletcher* (1792) 4 Term Rep 511; *Carter v Carter* (1829) 5 Bing 406 (payments by undertenant of rent due to head landlord); and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 266. As to the protection afforded to an undertenant or lodger who pays the superior landlord under the Law of Distress Amendment Act 1908 s 3 see PARA 961 ante.

3 See eg *Skinner v Hunt* [1904] 2 KB 452, CA (a case under the Metropolis Management Amendment Act 1862 s 96 (repealed)). As to deductions from rent see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 266 et seq.

4 *Dallman v King* (1837) 4 Bing NC 105 (sum expended in repairs).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/985. Allowances made by mistake.

985. Allowances made by mistake.

If by mistake and without fraud the tenant is permitted to make deductions from his rent in respect of outgoings which he ought to have borne himself, and the receipt is given for the balance expressing it to be such, the deductions are treated as payment, and cannot afterwards be distrained for¹.

¹ *Waller v Andrews* (1838) 3 M & W 312; *Bramston v Robins* (1826) 4 Bing 11.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/986. Set-off against rent.

986. Set-off against rent.

It was formerly thought that the general rule of law¹ was that there was no right to set-off against or deduct from the rent distrained for sums due from the landlord to the tenant or payments made on behalf of the landlord². This is no longer true: a landlord is not entitled to distrain for rent against which the tenant can claim a set-off³.

Further, in the case of an agricultural holding where the amount of any compensation due to the tenant under the enactment relating to agricultural holdings or under any custom or agreement has been ascertained before the landlord distrains for rent, that amount may be set-off against the rent and the landlord cannot distrain for more than the balance⁴.

1 le subject to the exceptions: see PARAS 984-985 ante.

2 *Absolon v Knight and Barber* (1743) Barnes 450; *Laycock v Tufnell* (1787) 2 Chit 531; *Willson v Davenport* (1833) 5 C & P 531; *Townrow v Benson* (1818) 3 Madd 203; *Pratt v Keith* (1864) 10 Jur NS 305; and see further LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 266 et seq. As to set-off generally see CIVIL PROCEDURE vol 11 (2009) PARA 634 et seq.

3 See *Eller v Grovecrest Investments Ltd* [1995] QB 272, [1994] 4 All ER 845, CA; para 911 note 10 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 697.

4 See the Agricultural Holdings Act 1986 s 17; and AGRICULTURAL LAND vol 1 (2008) PARA 346.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/987. When double rent may be distrained for.

987. When double rent may be distrained for.

There is one instance in which the law allows the landlord to distrain for double rent, and that is when the tenant gives notice of his intention to quit the premises at a particular time, and does not deliver up possession accordingly; he then becomes liable to pay the landlord double the former rent for the whole time he holds the premises after the expiration of such notice¹. Such double rent may be levied and recovered as the former single rent might have been². This provision only applies where the tenant has given a notice binding upon him to quit at the expiration of the term specified in the notice and upon which the landlord might at that time act and bring a claim for recovery of the land³.

1 Distress for Rent Act 1737 s 18. See generally *Oliver Ashworth (Holdings) Ltd v Ballard (Kent) Ltd* [2000] Ch 12, [1999] 2 All ER 791, CA.

2 See note 1 supra.

3 *Johnstone v Hudlestone* (1825) 4 B & C 922. The provision is inapplicable in the case of a notice to quit too vague to be acted upon: *Farrance v Elkington* (1811) 2 Camp 591. 'Landlord' includes an assignee of the reversion where the assignment has been made after expiry of the notice to quit and the assignor has not taken any proceedings against the tenant: *Northcott v Roche* (1921) 37 TLR 364. See further LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 667 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/988. Time for distress for arrears.

988. Time for distress for arrears.

No distress may be made to recover arrears of rent after the expiration of six years from the date on which the arrears became due¹. The right to distrain for six years' arrears subsists as long as the relationship of landlord and tenant continues, however long may have been the period of the non-payment².

1 Limitation Act 1980 s 19. As to the extension of limitation periods in the case of disability see s 28 (as amended); and LIMITATION PERIODS vol 68 (2008) PARAS 1170-1180. As to postponement of limitation periods in the case of fraud, concealment or mistake see s 32 (as amended); and LIMITATION PERIODS vol 68 (2008) PARAS 1220-1230.

2 *Archbold v Scully* (1861) 9 HL Cas 360; and see *Woodcock v Titterton* (1864) 12 WR 865; and LIMITATION PERIODS vol 68 (2008) PARAS 1062, 1074.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/989. Agricultural holding.

989. Agricultural holding.

A distress upon an agricultural holding is limited to rent which became due in respect of the holding not more than one year before the making of the distress¹.

¹ See the Agricultural Holdings Act 1986 s 16; *Crosse v Welch* (1892) 8 TLR 709, CA; and AGRICULTURAL LAND vol 1 (2008) PARA 346.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/990. Arrears due before assignment of term.

990. Arrears due before assignment of term.

A landlord may not levy a distress against goods of an assignee of the tenancy in relation to arrears of rent which became due before the assignment¹.

¹ *Wharfland Ltd v South London Co-operative Building Co Ltd* [1995] 2 EGLR 21, [1995] 30 EG 95. See also PARA 909 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(8) FOR WHAT AMOUNT DISTRESS MAY BE MADE/991. To cover costs of distress.

991. To cover costs of distress.

In addition to the actual amount of rent due the landlord may distrain sufficient chattels to cover the expenses of the distress¹.

If, after the bailiff distrains, the rent is paid to the landlord, the bailiff has no right to go on and sell for his expenses².

1 See the Distress for Rent Act 1689 s 1 (as amended); and PARA 1058 post.

2 *Harding v Hall* (1866) 14 LT 410. See also PARA 1048 post. As to bailiffs see PARA 992 et seq post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(i) The Warrant/992. Authority of bailiff.

(9) LEVYING THE DISTRESS

(i) The Warrant

992. Authority of bailiff.

A landlord may distrain either in person or by an authorised bailiff or agent¹. The bailiff distrains as agent for the landlord².

When a bailiff makes a distress he must have authority to do so from his employer³. As the distrainee is entitled to know by what right the bailiff is acting, this authority is generally and should properly be in writing, and is commonly called a distress warrant or warrant of distress; but it is not essential to his authority that a bailiff should be appointed in writing. Even a corporation aggregate may at common law appoint a person to distrain without deed or warrant⁴.

A distress made without previous authority may be afterwards recognised and adopted by the landlord, and the adoption relates back to the time of taking the distress and will be as effectual as a previous authority would have been⁵.

The authority conferred by a warrant to distrain may be withdrawn at any time before the goods are actually sold⁶. When a warrant to distrain is in fact given to one person, it cannot be executed by another not named in it⁷.

In the case of a joint distress, as by joint tenants, the warrant may be signed by all the parties entitled⁸ or may be given by one only to authorise a distress for the rent due to all⁹.

A distress warrant does not require to be stamped¹⁰.

1 *Symonds v Kurtz* (1889) 61 LT 559, DC. As to who may be a bailiff see PARA 994 post. As to fees for levying see PARA 1058 note 1 post.

2 *Re Caidan, ex p Official Receiver v Regis Property Co Ltd* [1942] Ch 90 at 96, [1941] 3 All ER 491 at 496 per Morton J.

3 See note 1 supra.

4 *Cary v Matthews* (1688) 1 Salk 191n; *Randle v Dean and Pope* (1700) 2 Lut 1496 at 1497; *Smith v Birmingham Gas Co* (1834) 1 Ad & El 526. As to statutory powers of corporations to appoint agents see AGENCY vol 1 (2008) PARA 20; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1273.

5 *Trevillian v Pine* (1708) 11 Mod Rep 112; notes to *Potter v North* (1669) 1 Saund 346 at 347; *Haseler v Lemoyne* (1858) 5 CBNS 530; *Duncan v Meikleham* (1827) 3 C & P 172; and see *Whitehead v Taylor* (1839) 10 Ad & El 210 (ratification by executor after probate); *Smith v Birmingham Gas Co* (1834) 1 Ad & El 526; *Church v Imperial Gas Light and Coke Co* (1838) 6 Ad & El 846 at 861 (ratification by corporation).

6 *Harding v Hall* (1866) 14 LT 410.

7 *Symonds v Kurtz* (1889) 61 LT 559, DC.

8 *Buller's Case* (1587) 1 Leon 50.

9 *Leigh v Shepherd* (1821) 2 Brod & Bing 465; *Robinson v Hofman* (1828) 4 Bing 562; *Stedman v Bates* (1695) 1 Ld Raym 64.

10 *Pyle v Partridge* (1846) 15 M & W 20.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(i) The Warrant/993. Implied indemnity to bailiff.

993. Implied indemnity to bailiff.

A warrant of distress creates an implied warranty on the part of the landlord that he has the right to distrain and an implied undertaking to indemnify the bailiff against any act properly done in exercise of the authority given to him¹. It will not, however, indemnify the bailiff against illegal or irregular acts done by him or his employees in the course of the distress, in the absence of an indemnity expressly worded to cover them, unless the conduct of the landlord has been such as to induce the bailiff to believe that he was acting under an indemnity from the landlord covering such acts². Thus a warrant in the ordinary form confers no authority on the bailiff to levy on privileged goods; but where the levy is made by the express direction of the landlord the latter is bound to indemnify the bailiff³.

1 *Draper v Thompson* (1829) 4 C & P 84. As to authority of bailiff see PARA 992 ante.

2 *Draper v Thompson* (1829) 4 C & P 84; *Toplis v Grane* (1839) 5 Bing NC 636; *Dugdale v Lovering* (1875) LR 10 CP 196; *Ibbett v De la Salle* (1860) 6 H & N 233.

3 *Toplis v Grane* (1839) 5 Bing NC 636.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/994. Bailiff must hold certificate.

(ii) The Bailiff

994. Bailiff must hold certificate.

No person may be employed as a bailiff to levy any distress for rent unless he is authorised to act as a bailiff by a certificate in writing under the hand of a judge assigned to a county court district, or acting as a judge so assigned¹. The certificate may be general or special (that is, applying to a particular distress or distresses)². Every bailiff levying a distress must produce this certificate³ to the tenant if he is present or, in the absence of the tenant, to such other person present as appears to be in control of the premises⁴. He should also produce his warrant and show the cause of taking the distress if required⁵. Such a certificate may be granted only by a judge⁶ and authorises the bailiff named in it to levy at any place in England and Wales⁷. A certificate, unless cancelled, has effect for the period of two years from the date of its grant⁸.

No certificate may be granted to any officer of a county court⁹. The judge may not grant a certificate to any applicant¹⁰: (1) who fails to satisfy the judge, as the case may be, that he is a fit and proper person to hold a certificate, and that he possesses a sufficient knowledge of the law of distress¹¹; or (2) who carries on or will be employed in any business which includes buying debts¹². In applying for a certificate, an applicant must undertake not to levy distress at any premises in respect of which he is regularly employed to collect rent¹³. A minor cannot be appointed bailiff¹⁴.

1 Law of Distress Amendment Act 1888 s 7 (amended by the Courts Act 1971 s 56(1), Sch 8 para 2); *Re Sanders, ex p Sergeant* (1885) 54 LJQB 331.

2 Law of Distress Amendment Act 1888 s 7. As to the issue of certificates see PARA 995 post; and as to the cancellation of certificates see PARA 998 post.

3 To be a certificate to act as a bailiff granted under the Law of Distress Amendment Act 1888, as amended by the Law of Distress Amendment Act 1895 (see the text to notes 1-2 supra): Distress for Rent Rules 1988, SI 1988/2050, r 2(1). These rules are made under the Law of Distress Amendment Act 1888 s 8 (amended by the Statute Law Revision Act 1908), and the Law of Distress Amendment Act 1895 s 3. As to the form of a bailiff's certificate see the Distress for Rent Rules 1988, SI 1988/2050, App 2 Form 1 (amended by SI 1999/2360).

4 Distress for Rent Rules 1988, SI 1988/2050, r 12(1).

5 *Buller's Case* (1587) 1 Leon 50; and see PARAS 992 ante, 1011 et seq post.

6 'Judge' means a judge of a county court: Distress for Rent Rules 1988, SI 1988/2050, r 2(1).

7 Ibid r 3(1) (amended by SI 1999/2360).

8 Distress for Rent Rules 1988, SI 1988/2050, r 7(1) (amended by SI 1999/2360).

9 Distress for Rent Rules 1988, SI 1988/2050, r 5(3).

10 Ibid r 5(1) (amended by SI 1999/2360). As to complaints regarding fitness to hold a certificate see the Distress for Rent Rules 1988, SI 1988/2050, r 8 (as amended); and PARA 997 post.

11 Ibid r 5(1)(a) (as amended: see note 10 supra).

12 Ibid r 5(1)(b).

13 Ibid App 2 Form 3 Pt 5 (Form 3 substituted by SI 1999/2360).

14 *Cuckson v Winter* (1828) 2 Man & Ry KB 313. The age of majority is 18: see the Family Law Reform Act 1969 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 1.

UPDATE

994 Bailiff must hold certificate

NOTE 13--SI 1988/2050 App 2 Form 3 Pt 5 amended: SI 2009/873.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/995. Application for certificate.

995. Application for certificate.

The applicant for the grant of a certificate to act as a bailiff¹ is required to lodge in court² by way of bond or deposit, or satisfy the judge³ that there is subsisting by way of bond or deposit, security totalling £10,000⁴. An application for the grant of a certificate must be made in the prescribed form⁵. The applicant must state his address⁶ and whether his area of business extends beyond the district of the court at which the application was made, and he must also state whether he has applied for and been refused or had cancelled a certificate⁷. Applications must be filed in the office of the applicant's issuing county court⁸, accompanied by the prescribed fee⁹, and must be lodged together with certain documents¹⁰. If so directed, the applicant must lodge such further evidence as the judge may reasonably require in support of his application¹¹. The statements in such an application must be verified on oath¹². The name and address of all applicants for a certificate are to be exhibited in the public area of the court office for the 60 days prior to the hearing of the application¹³.

The applicant must cause to be published in an appropriate newspaper¹⁴ a notice in the prescribed form¹⁵ so that the notice appears in three separate editions of that newspaper during the 60 days prior to the hearing of the application¹⁶, and he must, not less than three days before the hearing of the application, file with the court the editions of the appropriate newspaper (or extracts from it) showing such notices¹⁷. Each issuing county court must compile and maintain a list of appropriate newspapers published within its issuing area¹⁸ and copies of the list are to be exhibited in the public area of the court office of each county court in the issuing area, and given to members of the public on request¹⁹.

An application for a certificate may not be granted except on the personal attendance of the applicant and his examination on oath at the hearing of the application²⁰.

Each issuing county court must also compile a list of bailiffs carrying on business within that court's issuing area and holding certificates as at 1 February every year, and the list is to be exhibited in the public area of the court office of each county court in the issuing area²¹. When a certificate is cancelled, the list must be amended to include that fact²².

1 As to the certificate to act as a bailiff see PARA 994 ante.

2 'Lodge in court' means pay or transfer into court or deposit in court: Court Funds Rules 1987, SI 1987/821, r 2(2); definition applied by the Distress for Rent Rules 1988, SI 1988/2050, r 2(1).

3 For the meaning of 'judge' see PARA 994 note 6 ante.

4 Distress for Rent Rules 1988, SI 1988/2050, r 6(1) (amended by SI 1999/2360). The security is for the due performance of the bailiff's duties and for any reasonable costs, fees and expenses incurred in the investigation of any complaint lodged against the bailiff, or in the cancellation of his certificate, and is to be applied in accordance with the Distress for Rent Rules 1988, SI 1988/2050, rr 8, 9 (both as amended) (see PARAS 997-998 post): r 6(2). The bailiff maintains the security throughout the duration of the certificate: r 6(2A) (r 6(2A), (2B) added by SI 1999/2360). If, at any time during the duration of the certificate, for any reason (other than where the Distress for Rent Rules 1988, SI 1988/2050, r 9(2) (see PARA 998 post) applies), the security no longer exists, or is reduced in value so that it amounts to less than £10,000, the bailiff must provide fresh security under this rule to the satisfaction of the court: r 6(2B) (as so added). Where a deposit is lodged in court, the provisions of the Court Funds Rules 1987, SI 1987/821 (as amended) (see CIVIL PROCEDURE; COURTS) apply: Distress for Rent Rules 1988, SI 1988/2050, rr 2(1), 6(3).

5 Ibid r 4(1) (substituted by SI 1999/2360). For the prescribed form of application for a certificate to levy distress see the Distress for Rent Rules 1988, SI 1988/2050, App 2 Form 3 (substituted by SI 1999/2360; and amended by SI 2000/1481).

6 As to the procedure when a bailiff's details change see PARA 996 post.

7 Distress for Rent Rules 1988, SI 1988/2050, App 2 Form 3 Pt 1 (as substituted: see note 5 supra). As to cancellation of a certificate see PARA 998 post.

8 'Issuing county court' means a county court whose name appears in ibid App 3 Table col 2 (App 3 Table added by SI 1999/2360; amended by SI 1999/2564; SI 1999/3186; SI 2000/1481; SI 2000/2737; SI 2001/4026); and 'the applicant's issuing county court' means, in relation to an applicant, the county court whose name appears in the Distress for Rent Rules 1988, SI 1988/2050, App 3 Table col 2 (as added and amended) opposite the name of his home county court: r 2(1) (definitions added by SI 1999/2360). 'Home county court' means, in relation to any person, the county court in whose district that person has his principal place of business or his main residence: Distress for Rent Rules 1988, SI 1988/2050, r 2(1) (definition added by SI 1999/2360).

9 le the fee prescribed for the 'commencement of originating proceedings for any other remedy or relief': see the Civil Proceedings Fees Order 2004, SI 2004/3121 (amended by SI 2005/473; SI 2005/3445); and CIVIL PROCEDURE; COURTS.

10 Distress for Rent Rules 1988, SI 1988/2050, r 4(4) (amended by SI 1999/2360). The application and fee must be lodged together with: (1) two references, one of which may be from the applicant's employer or an approved officer of the Certificated Bailiffs' Association of England and Wales and must deal with the applicant's knowledge of the law of distress and his previous experience of levying distress; (2) a certified copy not more than one month old of the result of a search of the register of county court judgments against the applicant's full name and his home and business addresses for the last six years; (3) two passport sized photographs of the applicant; and (4) copies of the Distress for Rent Rules 1988, SI 1988/2050, App 2 Forms 7, 8 and 9 intended to be used by the applicant when levying distress, which must conform to the design and layout prescribed in App 2 (as amended), must be on paper of durable quality and of the size A4 as specified by the International Standards Organisation, and must be in a clear and legible printed or type-written form: r 4(4) (as so amended).

11 Ibid r 4(6) (amended by SI 1999/2360).

12 Distress for Rent Rules 1988, SI 1988/2050, r 4(5).

13 Ibid r 5(4) (amended by SI 1999/2360).

14 'Appropriate newspaper' means a local newspaper appearing in a list of local newspapers approved by the court officer of the issuing county court for the purpose of publication of notices under the Distress for Rent Rules 1988, SI 1988/2050, r 5(5) (as amended) (see note 16 infra): r 2(1) (definition added by SI 1999/2360). 'Court officer' means a member of the court staff: CPR 2.3(1); definition applied by the Distress for Rent Rules 1988, SI 1988/2050, r 2(1) (definition substituted by SI 1999/2360).

15 le the form set out in the Distress for Rent Rules 1988, SI 1988/2050, r 5(7) (added by SI 1999/2360).

16 Distress for Rent Rules 1988, SI 1988/2050, r 5(5) (r 5(5)-(8) added by SI 1999/2360).

17 Distress for Rent Rules 1988, SI 1988/2050, r 5(6) (as added: see note 16 supra).

18 'Issuing area' means, in relation to an issuing county court, the area constituted by the district of that issuing county court and the districts of any other county courts whose names appear in ibid App 3 Table col 1 (as added and amended) (see note 8 supra) opposite the name of that issuing county court: r 2(1) (definition added by SI 1999/2360).

19 Distress for Rent Rules 1988, SI 1988/2050, r 5(8) (as added: see note 16 supra).

20 Ibid r 5(2) (amended by SI 1999/2360).

21 Distress for Rent Rules 1988, SI 1988/2050, r 13(1) (substituted by SI 1999/2360).

22 Distress for Rent Rules 1988, SI 1988/2050, r 13(2). As to the cancellation of a certificate see PARA 998 post.

UPDATE

995 Application for certificate

NOTE 5--SI 1988/2050 App 2 Form 3 further amended: SI 2009/873.

NOTE 8--SI 1988/2050 App 3 Table further amended: SI 2009/873.

NOTE 9--SI 2004/3121 replaced: Civil Proceedings Fees Order 2008, SI 2008/1053 (see CIVIL PROCEDURE vol 11 (2009) PARA 87).

NOTE 10--In head (2), for 'register of county court judgments' read 'register of judgments, orders, fines and tribunal decisions'; add head (5) a certified copy of a criminal conviction certificate, a criminal record certificate or an enhanced criminal record certificate relating to the applicant that has been issued pursuant to the Police Act 1997 Pt V (ss 112-127) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 711-732) and that is not more than one month old: SI 1988/2050 r 4.4 (amended by SI 2009/873).

TEXT AND NOTE 21--The list of bailiffs must also be published on the website of Her Majesty's Court Service: SI 1988/2050 r 13(1) (amended by SI 2009/873).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/996. Replacement certificates.

996. Replacement certificates.

Once a certificate¹ has been issued, if there is any change in a bailiff's name, address or other written information appearing on the certificate (the 'relevant details')², the bailiff must without delay give written notice of the change to the issuing county court³ and produce his certificate ('the old certificate') to the court officer of the issuing county court⁴. When a bailiff gives notice and produces the old certificate, the judge⁵ of the issuing county court must issue to the bailiff a replacement certificate reflecting the change in the relevant details but in all other respects (including, without limitation, the date of expiry of the certificate⁶) the same as the old certificate⁷. When such a replacement certificate is issued, the court officer must retain and cancel the old certificate⁸. No fee is payable for the issue of such a replacement certificate⁹.

1 As to the certificate to act as a bailiff see PARA 994 ante.

2 Distress for Rent Rules 1988, SI 1988/2050, r 7A(1) (r 7A added by SI 1999/2360).

3 For the meaning of 'issuing county court' see PARA 995 note 8 ante.

4 Distress for Rent Rules 1988, SI 1988/2050, r 7A(2) (as added: see note 2 supra). For the meaning of 'court officer' see PARA 995 note 14 ante.

5 For the meaning of 'judge' see PARA 994 note 6 ante.

6 As to the duration of a certificate see PARA 994 text to note 8 ante.

7 Distress for Rent Rules 1988, SI 1988/2050, r 7A(3) (as added: see note 2 supra).

8 Ibid r 7A(4) (as added: see note 2 supra).

9 Ibid r 7A(5) (as added: see note 2 supra).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/997. Complaints as to fitness to hold a certificate.

997. Complaints as to fitness to hold a certificate.

Any complaint as to the conduct or fitness of any bailiff who holds a certificate¹ must be made in the relevant form² to the court from which the certificate issued³. Upon receipt of any such complaint, the court officer⁴ must send written details of the complaint to the bailiff and require him to deliver a written reply to the court office within 14 days thereafter or within such longer time as the court may specify⁵.

If the bailiff fails to deliver the reply within the time specified, or if upon reading the reply the judge⁶ is unsatisfied as to the bailiff's fitness to hold a certificate, the court officer must issue a notice summoning the bailiff to appear before the judge on a specified date and show cause why his certificate should not be cancelled⁷. If upon reading the reply the judge is satisfied as to the bailiff's fitness to hold a certificate, the court officer must issue a notice to the bailiff to that effect and no further action is to be taken in respect of that complaint⁸. The court officer must send a copy of the appropriate notice to the complainant and any other interested party⁹.

If, after a notice has been issued summoning the bailiff to appear before the judge¹⁰, the complainant so applies in writing, and the application is received by the court not later than 14 days before the date set for the hearing, the court officer of the court receiving the complaint must order that the complaint be heard in the issuing county court¹¹ for the complainant's home county court¹². In the event of such an order being made, the court officer of the court receiving the complaint must forthwith send: (1) to the court officer of the court hearing the complaint certified copies of any relevant entries in the records of the court receiving the complaint, and copies of all other documents in his custody relating to the bailiff's certificate and to the complaint; and (2) to the bailiff and any other interested party, notice of the order so made¹³.

At the hearing the bailiff must attend for examination and may make representations, and the complainant may attend and make representations¹⁴. The procedure to be followed at the hearing, including the calling of evidence, is such as the judge considers just, and he may proceed with the hearing notwithstanding that the bailiff has failed to attend¹⁵.

If an order is made that the complaint be heard in the issuing county court for the complainant's home county court¹⁶, the court officer of the court hearing the complaint must, following the hearing, send to the court officer of the court which received the complaint certified copies of the order and all other documents in his custody relating to the bailiff's certificate and to the complaint¹⁷.

1 As to the certificate to act as a bailiff see PARA 994 ante.

2 I.e. in the Distress for Rent Rules 1988, SI 1988/2050, App 2 Form 4 (substituted by SI 1999/2360) or, where the complainant has conducted a formal investigation into a complaint by a third party against the bailiff, in the Distress for Rent Rules 1988, SI 1988/2050, App 2 Form 5 (substituted by SI 1999/2360): Distress for Rent Rules 1988, SI 1988/2050, r 8(1) (amended by SI 1999/2360).

3 Distress for Rent Rules 1988, SI 1988/2050, r 8(1).

4 For the meaning of 'court officer' see PARA 995 note 14 ante.

5 Distress for Rent Rules 1988, SI 1988/2050, r 8(2) (amended by SI 1999/2360).

6 For the meaning of 'judge' see PARA 994 note 6 ante.

- 7 Distress for Rent Rules 1988, SI 1988/2050, r 8(3) (amended by SI 1999/2360).
- 8 Distress for Rent Rules 1988, SI 1988/2050, r 8(3A) (added by SI 1999/2360).
- 9 Distress for Rent Rules 1988, SI 1988/2050, r 8(4) (amended by SI 1999/2360).
- 10 *Ie* under *ibid* r 8(3) (as amended): see the text to note 7 *supra*.
- 11 For the meaning of 'issuing county court' see PARA 995 note 8 *ante*.
- 12 Distress for Rent Rules 1988, SI 1988/2050, r 8(4A) (r 8(4A), (4B) added by SI 1999/2360). The complaint must be heard in the issuing county court whose name appears in the Distress for Rent Rules 1988, SI 1988/2050, App 3 Table col 2 (as added) (see PARA 995 *ante*) opposite the name of the complainant's home county court: r 8(4A) (as so added).
- 13 *Ibid* r 8(4B) (as added: see note 12 *supra*).
- 14 *Ibid* r 8(5).
- 15 *Ibid* r 8(6).
- 16 *Ie* under *ibid* r 8(4A) (as added): see the text to notes 10-12 *supra*.
- 17 *Ibid* r 8(7) (added by SI 1999/2360). This includes the certified copies and copies sent under head (1) in the text: Distress for Rent Rules 1988, SI 1988/2050, r 8(7) (as so added).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/998. Cancellation of certificate and forfeiture of security.

998. Cancellation of certificate and forfeiture of security.

A certificate¹ granted to a bailiff by a judge² of a county court³ may at any time be cancelled or declared void by a judge of that county court⁴. Following the hearing of any complaint⁵ the judge may, whether he cancels the certificate or not, order that the security⁶ is to be forfeited either wholly or in part, and that the amount or amounts directed to be forfeited are to be paid to any complainant by way of compensation for failure in due performance of the bailiff's duties, costs or expenses or, where costs, fees and expenses have been incurred by the court, to Her Majesty's Paymaster General⁷.

Where an order for the forfeiture of the security, either wholly or in part, is made but the certificate is not cancelled, the judge may direct that fresh security⁸ is to be provided⁹. When a certificate is cancelled or expires it nevertheless continues to have effect for the purpose of any distress where the bailiff has entered into possession before the date of cancellation or expiry, unless the judge otherwise directs¹⁰. When a certificate is cancelled or expires it must be surrendered to the judge, unless he otherwise directs¹¹. When a bailiff holding a certificate ceases, for any reason, to carry on business as a bailiff he must forthwith surrender his certificate to the judge at the county court which issued the certificate, unless the judge otherwise directs, and as from the date of the surrender the certificate is to be treated as if it had expired on that date¹².

When a certificate is cancelled the court officer¹³ must publish a notice to that effect in an appropriate newspaper¹⁴, and the costs of the notice are deducted from the security¹⁵.

1 As to the certificate to act as a bailiff see PARA 994 ante.

2 For the meaning of 'judge' see PARA 994 note 6 ante.

3 Ie under the Law of Distress Amendment Act 1888 s 7 (as amended): see PARA 994 ante.

4 Law of Distress Amendment Act 1895 s 1 (amended by the Statute Law Revision Act 1908).

5 Ie under the Distress for Rent Rules 1988, SI 1988/2050, r 8 (as amended): see PARA 997 ante.

6 As to the security see PARA 995 ante.

7 Distress for Rent Rules 1988, SI 1988/2050, r 9(1). As to Her Majesty's Paymaster General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 714. References, in r 9 (as amended), to the cancellation of a certificate do not include the cancellation of a certificate upon the issue of a duplicate certificate, in accordance with r 7A(4) (as added) (see PARA 995 ante): r 9(7) (added by SI 1999/2360). Where a certificate is cancelled, the order of the judge is to be in a prescribed form and, subject to the provisions of this rule, the security is to be cancelled and the balance of the deposit returned to the bailiff: Distress for Rent Rules 1988, SI 1988/2050, r 9(3). For the form of cancellation of a bailiff's certificate see App 2 Form 6.

8 Ie under *ibid* r 6 (as amended): see PARA 995 ante.

9 *Ibid* r 9(2).

10 *Ibid* r 9(4).

11 *Ibid* r 9(5) (amended by SI 1999/2360).

12 Distress for Rent Rules 1988, SI 1988/2050, r 9(5A) (added by SI 1999/2360).

- 13 For the meaning of 'court officer' see PARA 995 note 14 ante.
- 14 For the meaning of 'appropriate newspaper' see PARA 995 note 14 ante.
- 15 Distress for Rent Rules 1988, SI 1988/2050, r 9(6) (amended by SI 1999/2360).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/999. Consequences of acting without certificate.

999. Consequences of acting without certificate.

If any person not holding a certificate¹ levies a distress contrary to the statutory provisions, the person so levying, and any person who has authorised him so to levy, will be deemed to have committed a trespass², not only as against the tenant, but also as against a third party whose goods are seized³. The effect of this is to make a distress by an uncertificated bailiff an illegal distress, with all the consequences of a trespass *ab initio*⁴. In addition, an uncertificated bailiff who levies a distress will (without prejudice to any civil liability) be liable on summary conviction to a fine⁵.

1 As to the certificate to act as a bailiff see PARA 994 ante.

2 Law of Distress Amendment Act 1888 s 7. As to trespass see TORT vol 45(2) (Reissue) PARA 659 et seq.

3 *Perring & Co v Emerson* [1906] 1 KB 1.

4 See PARA 1076 post.

5 Law of Distress Amendment Act 1895 s 2 (amended by virtue of the Criminal Justice Act 1982 s 46). The fine referred to in the text is a fine not exceeding level 1 on the standard scale: see the Law of Distress Amendment Act 1895 s 2 (as so amended). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/1000. Uncertificated landlord may distrain.

1000. Uncertificated landlord may distrain.

An uncertificated landlord has the right to distrain in person, and after a levy he may leave to his uncertificated bailiff the conduct of the distress from levy to sale; but the managing director of a company is not in the position of landlord to the tenants of the company, and unless acting under a certificate as bailiff will be guilty of trespass in distraining¹.

¹ *Hogarth v Jennings* [1892] 1 QB 907, CA. In the case, however, only nominal damages were awarded as there had been no sale and the goods had only been distrained for a few hours. As to necessity for a bailiff to hold a certificate before he can levy a distress see PARAS 994, 999 ante. As to trespass see TORT vol 45(2) (Reissue) PARA 659 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/1001. Landlord's liability in respect of bailiff.

1001. Landlord's liability in respect of bailiff.

The bailiff is not an officer of the court so as to relieve the landlord from liability for the irregular acts of the bailiff. He remains the agent of the landlord who employs him¹. The landlord is liable to the tenant for any irregularities committed by the bailiff in the course of his employment so far as he is acting within the scope of his employment². For illegal acts outside the scope of such employment the landlord is not liable without proof that he actually directed them or ratified and adopted them with knowledge of what had been done, or that he chose without inquiry to take the risk upon himself and adopted such acts².

Thus where, under a warrant in ordinary form authorising him to distrain the goods and chattels of the tenant, a bailiff seized a fixture which was afterwards sold and the proceeds paid to the landlord, it was held that the receipt of the proceeds did not make the landlord liable, it not being shown that he was aware of the illegal seizure³. Recognition by the landlord of what has been done may amount to adoption and ratification⁴.

A bailiff is liable to the landlord for damages sustained by the latter by reason of the former's negligence or misconduct in exceeding his authority⁵.

¹ *Re Caidan, ex p Official Receiver v Regis Property Co Ltd* [1942] Ch 90 at 96, [1941] 3 All ER 491 at 496 per Morton J.

² See *Haseler v Lemoyne* (1858) 5 CBNS 530; *Lewis v Read* (1845) 13 M & W 834; *Hurry v Rickman and Sutcliffe* (1831) 1 Mood & R 126. As to vicarious liability see TORT vol 45(2) (Reissue) PARAS 304, 406, 815 et seq.

³ *Freeman v Rosher* (1849) 13 QB 780.

⁴ *Moore v Drinkwater* (1858) 1 F & F 134. See also PARA 1092 post.

⁵ *Megson v Mapleton* (1883) 49 LT 744; *White v Heywood* (1888) 5 TLR 115. As to the liability of the landlord to indemnify the bailiff see PARA 993 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(ii) The Bailiff/1002. Authority to accept tender.

1002. Authority to accept tender.

A bailiff holding a warrant to distrain has implied authority to receive rent and costs when tendered, notwithstanding express directions to the bailiff by the landlord not to receive them¹.

¹ *Hatch v Hale* (1850) 15 QB 10; and see PARA 976 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iii) The Entry/1003. Right to enter.

(iii) The Entry

1003. Right to enter.

The right to distrain necessarily involves the right to enter on the premises where the chattels are for the purpose of taking possession of them, indeed in order to exercise a right of distress it is necessary to enter the premises¹. The right implies a licence for the distrainer to enter the premises in any way short of breaking into the premises, even though he does that which in the case of any other person would be a trespass². Entering by force would constitute an offence against the Acts prohibiting forcible entry as well as being a trespass³.

1 *Evans v South Ribble Borough Council*[1992] QB 757, [1992] 2 All ER 695 (service of a notice is not enough). As to the position where the chattels have been fraudulently removed by the tenant see PARA 1063 et seq post.

2 *Long v Clarke*[1894] 1 QB 119, CA; *American Concentrated Must Corp v Hendry* (1893) 68 LT 742, CA; *Southam v Smout*[1964] 1 QB 308, [1963] 3 All ER 104, CA; and see *Gould v Bradstock* (1812) 4 Taunt 562 (entry from floor above). As to trespass see TORT vol 45(2) (Reissue) PARA 659 et seq.

3 Bac Abr, Forcible Entry and Detainer (B); and see *Evans v South Ribble Borough Council*[1992] QB 757, [1992] 2 All ER 695. As to forcible entry see the Criminal Law Act 1977 s 6 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 602.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iii) The Entry/1004. Unfastened door.

1004. Unfastened door.

The outer door may be opened in the ordinary way in which persons are accustomed to open it when it is left so as to be accessible to those having occasion to go into the premises¹. A licence to enter is implied from a door being left unfastened though closed². Thus the latch of the door may be lifted, or a key left outside the door turned, a bolt on the outside drawn back or the door gently pushed open³; but the distrainor may not put his hand through a hole and remove a bar which bars an outer door and thus effect an entry⁴.

1 *Ryan v Shilcock* (1851) 7 Exch 72 at 75.

2 *Nash v Lucas* (1867) LR 2 QB 590 at 593 per Lush J.

3 *Ryan v Shilcock* (1851) 7 Exch 72; *Eldridge v Stacey* (1863) 15 CBNS 458; *Southam v Smout* [1964] 1 QB 308, [1963] 3 All ER 104, CA.

4 Fitzherbert's Grand Abridgment, Distress, pl 21.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iii) The Entry/1005. Outer door must not be broken open.

1005. Outer door must not be broken open.

An outer door must not be broken open¹. This immunity from being broken open extends to the outer door of any building whatever, including an outhouse within the curtilage², as well as a barn, stable, or outhouse not within the curtilage of the dwelling house³. It would seem that entry through an outer door which had been broken open by an independent third party on his own account would not be illegal⁴. An inner door is not, however, part of the wall to a man's 'castle', and once a distrainor has properly obtained admission to a building, he is justified in breaking open an inner door or lock to find goods which are distrainable⁵ or to facilitate removal of the goods⁶.

A bailiff who lawfully obtains entry through one door may open another door from the inside to permit entry by another bailiff with whom he is conducting a joint operation⁷.

1 *Semayne's Case* (1604) 5 Co Rep 91a; *American Concentrated Must Corpn v Hendry* (1893) 62 LJQB 388, CA.

2 *American Concentrated Must Corpn v Hendry* (1893) 62 LJQB 388, CA; and see *Long v Clarke* [1894] 1 QB 119 at 121, CA, per Lord Esher MR.

3 *Brown v Glenn* (1851) 16 QB 254.

4 See *Nash v Lucas* (1867) LR 2 QB 590; *Sandon v Jervis* (1858) EB & E 935.

5 *Browning v Dann* (1735) Bull NP (7th Edn) 81c; *Lee v Gansel* (1774) 1 Cowp 1 at 8.

6 *Pugh v Griffith* (1838) 7 Ad & El 827.

7 *Southam v Smout* [1964] 1 QB 308, [1963] 3 All ER 104, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iii) The Entry/1006. Entering by window.

1006. Entering by window.

An open window is a legitimate means of access for the purpose of distraining¹ (as is an open skylight²) and when partially open it may be further opened for the purpose of obtaining admission³. As a window is not the usual means of obtaining access to a house, a distrainer may not open a closed but unfastened window, for to do so is a breaking into the house⁴. Much less can he obtain admission by breaking open a window⁵ or undoing the hasp⁶.

1 *Nixon v Freeman* (1860) 5 H & N 647, 652; *Long v Clarke* [1894] 1 QB 119, CA.

2 *Miller v Tebb* (1893) 9 TLR 515, CA.

3 *Crabtree v Robinson* (1885) 15 QBD 312.

4 *Crabtree v Robinson* (1885) 15 QBD 312; *Nash v Lucas* (1867) LR 2 QB 590; *Southam v Smout* [1964] 1 QB 308, [1963] 3 All ER 104, CA.

5 *Attack v Bramwell* (1863) 3 B & S 520.

6 *Hancock v Austin* (1863) 14 CBNS 634.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iii) The Entry/1007. Gates and fences.

1007. Gates and fences.

Gates may not be broken open or inclosures broken down¹, but the distrainor may climb over a wall or fence from the adjoining premises².

¹ Co Litt 161a.

² *Eldridge v Stacey* (1863) 15 CBNS 458; *Long v Clarke* [1894] 1 QB 119, CA, overruling *Scott v Buckley* (1867) 16 LT 573.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iii) The Entry/1008. Forcible re-entry.

1008. Forcible re-entry.

After an entry has been made and not abandoned, but the distrainor has been forcibly expelled or driven away by the tenant's violence, he may obtain assistance and break open the outer door, even after a considerable interval¹.

On the same principle a forcible re-entry may be made where the person in possession voluntarily goes away for a short period, and not with the intention of abandoning the distress, and on returning finds the door locked. In such a case he may break open the door². However, a bailiff is not entitled to re-enter a dwelling house by force unless he has been expelled by force or has been deliberately excluded by the tenant³. It is a question of fact in each case whether there has been an abandonment⁴.

When, after having been evicted, a bailiff re-enters for the purpose of his distress, he should confine himself to the goods originally seized⁵.

1 *Eagleton v Gutteridge* (1843) 11 M & W 465; *Eldridge v Stacey* (1863) 15 CBNS 458 (three weeks); but see *Boyd v Profaze* (1867) 16 LT 431 (original entry incomplete).

2 *Bannister v Hyde* (1860) 2 E & E 627.

3 *Khazanchi v Faircharm Investments Ltd* [1998] 2 All ER 901, [1998] 1 WLR 1603, CA.

4 *Eldridge v Stacey* (1863) 15 CBNS 458; *Bagshawes Ltd v Deacon* [1898] 2 QB 173, CA; *Russell v Rider* (1834) 6 C & P 416. Permitting a third person to remove the goods for a temporary purpose is not an abandonment of them: *Kerby v Harding* (1851) 6 Exch 234; and cf *Jones v Biernstein* [1900] 1 QB 100, CA.

As against the tenant, the necessity for keeping a man in close possession may be avoided by getting the tenant or a responsible person in the house to enter into an agreement for walking possession: see *National Commercial Bank of Scotland Ltd v Arcam Demolition and Construction Ltd* [1966] 2 QB 593, [1966] 3 All ER 113, CA (a case of execution). Walking possession is not, however, sufficient as against a stranger who is not aware of the impounding: *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA. See further PARA 1018 post.

5 *Smith v Torr* (1862) 3 F & F 505.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iv) Seizure/1009. Seizure of chattels.

(iv) Seizure

1009. Seizure of chattels.

To complete a distress a seizure of the chattels is necessary. A seizure may be either actual or constructive¹. It is actual by laying hands on the article, or on one of several articles, and claiming to detain it or them until the rent is satisfied². The most proper manner of making a distress is for the person distraining to go upon any part of the premises out of which the rent issues and take hold of some personal chattel declaring that it is taken as a distress in the name of all the goods, or of so much as will satisfy the rent in arrear, and this will be a good seizure of all³. No particular form of words is, however, necessary provided the intention is manifest.

1 *Cramer v Mott*(1870) LR 5 QB 357 at 359 per Cockburn CJ; and see *Central Printing Works Ltd v Walker and Nicholson* (1907) 24 TLR 88. As to constructive seizure see PARA 1010 post.

2 *Cramer v Mott*(1870) LR 5 QB 357 at 359; *Wood v Nunn* (1828) 5 Bing 10; *Lloyd's and Scottish Finance Ltd v Modern Cars and Caravans (Kingston) Ltd*[1966] 1 QB 764, [1964] 2 All ER 732.

3 *Dod v Monger* (1704) 6 Mod Rep 215.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(iv) Seizure/1010. Constructive seizure.

1010. Constructive seizure.

A constructive seizure may occur in various ways. It is enough that the landlord or his agent interferes to prevent the removal of the article from off the premises on the ground that rent is in arrear, and he does this when he declares that the article is not to be removed until the rent is paid¹, and it is immaterial that the article is in fact subsequently removed².

Any acts indicative of an intention that antecedent steps should be treated as a distress, and assumed by the parties to amount to a distress, will be sufficient evidence of a seizure. Thus if money is paid on the footing that there has been a distress³, or if the bailiff after intimating his intention to distrain walks round the demised premises and without touching anything gives written notice that he has distrained, that will amount to a seizure⁴.

A mere intention to distrain which is obviously abandoned is not sufficient⁵; and as against third parties no action will lie for removal of goods which have not been actually seized⁶.

1 *Cramer v Mott* (1870) LR 5 QB 357; *Wood v Nunn* (1828) 5 Bing 10.

2 *Werth v London and Westminster Loan Co* (1889) 5 TLR 320 at 321.

3 *Hutchins v Scott* (1837) 2 M & W 809.

4 *Swann v Earl of Falmouth* (1828) 8 B & C 456.

5 *Spice v Webb and Morris* (1838) 2 Jur 943.

6 *Pool v Crawcour* (1884) 1 TLR 165, CA. As to actual seizure see PARA 1009 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(v) Notice of Distress/1011. Necessity for notice of distress.

(v) Notice of Distress

1011. Necessity for notice of distress.

No notice of distress was necessary at common law, because at common law all that the distrainor was required to do was to seize the goods and impound them, and, if the impounding was in a private pound, to give notice of the place to which they were taken¹. By statute, whether the distress is levied by a bailiff or by the landlord in person, notice of the distress is necessary before the goods can be sold²; and where a bailiff levies the distress, notice is necessary whether or not a sale is intended³.

The right of sale to a distress is provided for by the Distress for Rent Act 1689, but before the distrainor can proceed to sale, he must cause notice of the fact of the distress having been made (with the cause of the taking) to be left at the chief mansion-house or other most notorious place on the premises charged with the rent distrained for⁴. It has, however, been held to be sufficient if the notice is delivered personally to the tenant or owner of the goods, as the case may be, even though the delivery is not at 'the chief mansion-house or other most notorious place on the premises', for the intention of the Act⁵ is only that the party should have notice, which is more satisfactorily performed in this way than by leaving it at a place⁶. As against a stranger whose goods have been seized, notice to him will satisfy the statute⁷. The notice must be in writing⁸, and if the distress is to be levied by a bailiff must be in a prescribed form⁹. An error in the name of the person on whose behalf the distress is made¹⁰, or in the time at which the rent distrained for became due¹¹, is immaterial, and it is not necessary to specify when the rent became due¹².

1 *Kerby v Harding*(1851) 6 Exch 234 at 240-241 per Parke B. As to impounding see PARA 1013 et seq post.

2 See the text to notes 4-12 infra.

3 See PARA 1012 post.

4 See the Distress for Rent Act 1689 s 1 (amended by the Statute Law Revision Act 1948).

5 Ie the Distress for Rent Act 1689 s 1 (as amended): see the text and note 4 supra.

6 *Walter v Rumbal* (1695) 1 Ld Raym 53; and see *Jarvis v Hemmings*[1912] 1 Ch 462.

7 *Walter v Rumbal* (1695) 1 Ld Raym 53.

8 *Wilson v Nightingale*(1846) 8 QB 1034. As to the form of a notice given by a landlord distraining in person see PARA 1012 post.

9 The requirements of the Distress for Rent Act 1689 s 1 (as amended) as to notice will be satisfied by the memorandum which the bailiff must serve by virtue of the Distress for Rent Rules 1988, SI 1988/2050 (as amended): see PARA 1012 post.

10 *Wootley v Gregory* (1828) 2 Y & J 536.

11 *Gambrell v Earl of Falmouth* (1835) 4 Ad & El 73.

12 *Moss v Gallimore* (1779) 1 Doug KB 279.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(9) LEVYING THE DISTRESS/(v) Notice of Distress/1012. Contents of notice.

1012. Contents of notice.

A bailiff levying distress must deliver to the tenant or leave on the premises where the distress is levied a memorandum in a prescribed form identifying the bailiff and specifying in an inventory the goods distrained on and setting out the amounts for which the distress is levied and the authorised fees, charges and expenses¹. The prescribed form includes an inventory and, on the back, a statement of the authorised scale of fees, charges and expenses².

Where the landlord distrains in person there is no prescribed form of notice³, but any notice should state the following matters:

- 13 (1) The cause of the taking, that is the amount of rent due⁴. At common law no duty is cast on the landlord distraining to inform the tenant what is the arrear of rent for which he distrains, as the tenant is presumed to know what things are in arrear for his land⁵; nor is he bound by an incorrect statement of the amount, since he may distrain at common law for one cause and afterwards in a claim for replevin or other claim he may justify for a different cause⁶; but when it becomes necessary to justify the act of selling the goods it must be shown that the landlord has given a notice showing the cause of the distress⁷.
- 14 (2) The goods taken⁸. The notice should contain such information as will enable the tenant to know exactly what particular goods have been seized⁹. General words indicating that all goods are distrained may render the notice void¹⁰.
- 15 (3) The place of impounding¹¹, if the goods are impounded off the premises¹².
- 16 (4) The time when the goods will be sold unless replevied or the rent and charges paid¹³.

1 Distress for Rent Rules 1988, SI 1988/2050, rr 2(2), 10, 12(2), App 1 (as amended), App 2 Form 7; and see PARA 1058 post. As to the powers under which the rules were made see PARA 994 note 3 ante. A bailiff or his agent attending to remove goods from the premises or withdrawing from possession prior to sale of the distrained goods must deliver to the tenant or leave on the premises where distress is levied a memorandum in a prescribed form setting out the expenses of removal authorised by and incurred under the Distress for Rent Rules 1988, SI 1988/2050 (as amended): r 12(3). As to the form for removal expenses see App 2 Form 9.

2 Ibid App 2 Form 7. The forms set out in the Distress for Rent Rules 1988, SI 1988/2050 (as amended) may be used with such variations as the circumstances may require: r 2(2).

3 Notice of distress need not be given unless a sale is intended so that the Distress for Rent Act 1689 s 1 (as amended) (see PARAS 1011 ante, 1044, 1056 post) will apply: see *Trent v Hunt* (1853) 9 Exch 14. See also PARA 1011 text to notes 4-9 ante.

4 *Kerby v Harding* (1851) 6 Exch 234.

5 *Tancred v Leyland* (1851) 16 QB 669, Ex Ch.

6 *Crowther v Ramsbottom* (1798) 7 Term Rep 654 at 658; *Etherton v Popplewell* (1800) 1 East 139 at 142; *Trent v Hunt* (1853) 9 Exch 14; *Phillips v Whisted* (1860) 29 LJQB 164 at 165 per Cockburn CJ. The mere fact of distraining for more rent than is due is not per se actionable (*Tancred v Leyland* (1851) 16 QB 669, Ex Ch, overruling *Taylor v Henniker* (1840) 12 Ad & El 488) if the goods taken are not more than sufficient to satisfy the rent actually due (*Tancred v Leyland* supra; *French v Phillips* (1856) 1 H & N 564, Ex Ch). An allegation that the excessive distress was maliciously made will not render it actionable in the absence of special damage: *Stevenson v Newnham* (1853) 13 CB 285, Ex Ch.

7 See PARA 1011 ante.

8 This is generally done by furnishing a copy of the inventory of the goods taken. The distress must be restricted to the articles comprised in the inventory (*Sims v Tuffs* (1834) 6 C & P 207), and the fact that goods not comprised in the inventory have been discovered after the notice was given will not justify including them in the distress (*Bishop v Bryant* (1834) 6 C & P 484). The mere fact that articles not distrainable, eg fixtures, are included in the list does not give rise to a cause of action: *Beck v Denbigh* (1860) 29 LJCP 273.

9 *Kerby v Harding* (1851) 6 Exch 234.

10 *Davies v Property and Reversionary Investments Corp* [1929] 2 KB 222, DC; *Wakeman v Lindsey* (1850) 14 QB 625; *Kerby v Harding* (1851) 6 Exch 234.

11 As to impounding see PARA 1013 et seq post.

12 Omitting to state that the goods are impounded will not make the impounding void: *Tennant v Field* (1857) 8 E & B 336.

13 The omission to give the requisite notice makes it irregular to sell, but does not render the distress illegal (*Trent v Hunt* (1853) 9 Exch 14); so that if, notwithstanding the want of notice, the landlord sells, the person aggrieved thereby can recover any special damage he may have sustained (see the Distress for Rent Act 1737 s 19; and *Whitworth v Maden* (1847) 2 Car & Kir 517). See also PARA 1078 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(10) PROCEEDINGS BETWEEN SEIZURE AND SALE/(i) Impounding/1013. Object and manner of impounding.

(10) PROCEEDINGS BETWEEN SEIZURE AND SALE

(i) Impounding

1013. Object and manner of impounding.

When chattels have been seized, it is necessary to imprison and secure the chattels for safe custody until the cause of distress is satisfied or the statutory period¹ has elapsed at the expiration of which the chattels can be lawfully sold by reason of the tenant failing to replevy them. This imprisonment, called impounding, places the goods in the custody of the law². If before the chattels are impounded the tenant tenders a sufficient amount for rent and costs, it is unlawful to proceed further with the distress³.

Chattels may be impounded on the premises⁴ unless the tenant otherwise requests, or they may be removed to a pound off the premises⁵. A pound is either overt (open overhead) or covert (covered overhead).

¹ See PARA 1049 post.

² See eg *Abingdon RDC v O'Gorman*[1968] 2 QB 811, [1968] 3 All ER 79, CA (where the history of impounding was considered); and see *Evans v South Ribble Borough Council*[1992] QB 757 at 765, [1992] 2 All ER 695 at 700-701 per Simon Brown J. A walking possession agreement prevents the tenant from saying that goods are not impounded, but it is not sufficient to constitute impounding against third parties: see PARAS 1016, 1018 post.

³ *Vertue v Beasley* (1831) 1 Mood & R 21; and see PARA 975 ante.

⁴ See the Distress for Rent Act 1737 s 10. Formerly the practice was to remove goods to the public pound as a distress could only be impounded on the premises with the consent of the tenant; public pounds have practically ceased to exist. As to impounding on the premises see PARA 1016 post.

⁵ For exceptions to the right to impound off the premises see PARA 1014 post. As to impounding off the premises see PARA 1015 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(10) PROCEEDINGS BETWEEN SEIZURE AND SALE/(i) Impounding/1014. Exceptions to right to impound off the premises.

1014. Exceptions to right to impound off the premises.

There are two exceptions to the right to impound off the premises: (1) sheaves or cocks of corn, or corn loose or in the straw, or hay cannot be removed from the premises, but must be impounded where found¹; and (2) growing crops must, after they are cut, be placed in barns or any other proper place on the premises, and cannot be removed except in default of there being a proper place on the premises². In that case notice of the place where the thing distrained is deposited must, within one week after its deposit in such place, be given to the tenant or left at his last place of abode³.

1 See the Distress for Rent Act 1689 s 2 (amended by the Statute Law Revision Act 1948).

2 See the Distress for Rent Act 1737 s 8 (amended by the Statute Law Revision Act 1988).

3 Distress for Rent Act 1737 s 9.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(10) PROCEEDINGS BETWEEN SEIZURE AND SALE/(i) Impounding/1015. Impounding off the premises.

1015. Impounding off the premises.

Goods impounded off the premises are in the custody of the law while on their way to the pound and whilst in the pound. Their removal and retention in the pound are ordinarily plain and obvious to anyone and the impounding is effective against the tenant, or the owner of the goods, or a third party¹. In impounding off the premises the distrainer must select a suitable pound. Cattle may be impounded in a pound overt, but furniture and goods liable to be damaged by wet weather or to be stolen must be placed in a house or other pound covert². It seems doubtful if chattels can be brought back to the premises for the purpose of impounding after they have once been impounded off the premises³.

Impounding is for safe custody, and the distrainer is answerable for the condition of the pound at the time the chattels are put in. He must at his peril take care that the place is in a fit and proper state⁴, and he is liable for the loss of or injury to the distress if it is not⁵. For instance, if cattle are tied in the pound and strangle themselves the landlord will be liable, but he is not liable if they die by the act of God⁶.

1 *Abingdon RDC v O'Gorman* [1868] 2 QB 811 at 819, [1968] 3 All ER 79 at 82, CA, per Lord Denning MR, and at 823 and 84 per Davies LJ.

2 Co Litt 47b. For the meanings of 'pound overt' and 'pound covert' see PARA 1013 ante.

3 *Smith v Wright* (1861) 30 LJ Ex 313 at 315 per Bramwell B.

4 I.e. even in the unlikely event of its being a public pound.

5 *Wilder v Speer* (1838) 8 Ad & El 547; *Bignell v Clarke* (1860) 5 H & N 485.

6 *Vaspor v Edwards* (1702) 12 Mod Rep 658 at 665. As to the feeding of impounded animals see ANIMALS vol 2 (2008) PARA 761.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(10) PROCEEDINGS BETWEEN SEIZURE AND SALE/(i) Impounding/1016. Impounding on the premises.

1016. Impounding on the premises.

By statute goods distrained may be impounded or otherwise secured in such place or on such part of the premises as may be fit and convenient for the impounding and securing of the goods¹. It has been held that the goods should be moved to one or two rooms and locked up², but this rule has been mitigated by permitting, with the consent of the tenant, the goods to remain in their ordinary position on the premises³. Very slight evidence of such consent is sufficient⁴. The distraint is then good against the tenant⁵.

As against strangers, however, goods are impounded or otherwise secured only when there is a distinct act, such as locking them up in a room, making it manifest that the goods are not to be taken away⁶.

Cattle may be impounded in an open field⁷.

1 See the Distress for Rent Act 1737 s 10.

2 See eg *Washborn v Black* (1774) 11 East 405n; *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA. The whole premises should in no case be locked up to the exclusion of the tenant unless the locking up is necessary for the safe keeping of the distress (*Woods v Durrant* (1846) 16 M & W 149; *Cox v Painter* (1837) 7 C & P 767; *Etherton v Popplewell* (1800) 1 East 139; *Walker v Woolcott* (1838) 8 C & P 352 at 353) and it is not practicable to remove the distress to a convenient place off the premises (*Smith v Ashforth* (1860) 29 LJ Ex 259).

3 *Washborn v Black* (1774) 11 East 405n; *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA.

4 *Washborn v Black* (1774) 11 East 405n; *Tenant v Field* (1857) 8 E & B 336. As to walking possession agreements see PARA 1018 post.

5 *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA.

6 *Abingdon RDC v O'Gorman* [1968] 2 QB 811 at 821-822, [1968] 3 All ER 79 at 82-83, CA, per Lord Denning MR, and at 824-826 and 84-86 per Davies LJ (not following dicta in *Lavell & Co Ltd v O'Leary* [1933] 2 KB 200, CA).

7 *Castleman v Hicks* (1842) Car & M 266; *Thomas v Harries* (1840) 1 Man & G 695.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(10) PROCEEDINGS BETWEEN SEIZURE AND SALE/(i) Impounding/1017. Using the distress.

1017. Using the distress.

Whether impounded on or off the premises, the landlord may not use or work the goods or cattle impounded unless it is necessary to do so for the preservation of the thing distrained and is for the benefit of the owner, for example milch cows may be milked¹. The distrainer may permit the tenant to use the chattels while impounded, and even license their removal for a temporary purpose².

1 *Bagshawe v Goward* (1607) Cro Jac 147; Bac Abr, Distress (D). The dictum of Powis J to the contrary effect in *Vaspor v Edwards* (1702) 12 Mod Rep 658 at 662, would not, it is submitted, be good law now. See ANIMALS vol 2 (2008) PARA 758.

2 *Kerby v Harding* (1851) 6 Exch 234.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(10) PROCEEDINGS BETWEEN SEIZURE AND SALE/(i) Impounding/1018. Nature of possession to be kept.

1018. Nature of possession to be kept.

When the landlord impounds the goods upon the premises¹, leaving them there without anyone in possession, that is sufficient custody, for they are in the custody of the law². If he abandons them, then the possession reverts to the tenant. Whether or not his acts amount to an abandonment is always one of fact when the point arises³. If he puts a bailiff in possession it is not necessary that the bailiff should retain continuous physical possession⁴.

The modern practice is for the distrainor and the tenant to enter into a walking possession agreement. This permits the tenant to continue to have the use of the goods and to avoid the expense and inconvenience of having a person in possession. The tenant agrees that in consideration of the distrainor not leaving a person in close possession and leaving the goods in their existing positions he will not remove or allow any of the goods to be removed from the premises⁵. Such an agreement may be made by the tenant or a responsible person in the house⁶.

Such an agreement prevents the tenant from saying that there has not been an impounding actual or constructive⁷. It does not, however, bind any stranger who is not aware of the impounding⁸.

A form of walking possession agreement is prescribed⁹ and a charge for walking possession is provided for¹⁰.

1 As to impounding on the premises generally see PARA 1016 ante.

2 *Swann v Earl of Falmouth* (1828) 8 B & C 456; *Lavell & Co Ltd v O'Leary* [1933] 2 KB 200, CA.

3 *Lumsden v Burnett* [1898] 2 QB 177, CA. As to what amounts to abandonment see PARA 1061 post.

4 *Bannister v Hyde* (1860) 2 E & E 627; *Jones v Biernstein* [1899] 1 QB 470 (affd [1900] 1 QB 100, CA); and see *Kemp v Christmas* (1898) 79 LT 233, CA. As to the necessity for an impounding to be manifest in order to bind a stranger see the text to note 8 infra; and PARA 1016 ante. As to the charge of a possession fee see PARA 1058 notes 1, 7 post.

5 For the prescribed form of walking possession agreement see note 9 infra.

6 *National Commercial Bank of Scotland Ltd v Arcam Demolition and Construction Ltd* [1966] 2 QB 593, [1966] 3 All ER 113, CA (a case of execution). As to walking possession in cases of execution see CIVIL PROCEDURE vol 12 (2009) PARA 1330.

7 See *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA.

8 *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA, not following dicta in *Lavell & Co Ltd v O'Leary* [1933] 2 KB 200, CA; and see PARAS 1016 ante, 1071 post.

9 See the Distress for Rent Rules 1988, SI 1988/2050, App 2 Form 8 (amended by SI 2003/1858). The forms in the Distress for Rent Rules 1988, SI 1988/2050, App 2 (as amended) may be used with such variations as the circumstances may require: r 2(2).

10 See *ibid* r 10, App 1 para 3(ii) (as amended); and see further PARA 1058 text and note 8 post. As to the additional charge of a sum equal to value added tax see PARA 1058 note 1 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(10) PROCEEDINGS BETWEEN SEIZURE AND SALE/(ii) Appraisement/1019. Necessity for, and mode of, appraisement.

(ii) Appraisement

1019. Necessity for, and mode of, appraisement.

An appraisement of the chattels distrained is only necessary as a condition precedent to a sale¹, first, when the tenant or owner of the chattels by writing requires such appraisement to be made², and, secondly, in the case of growing crops³. Where appraisement is necessary, the appraisers must be reasonably competent, though not necessarily professional, appraisers⁴, and they must be disinterested persons⁵. Where, however, the broker to save expense has valued the goods at the instance of the person distrained upon, the latter cannot afterwards complain of it⁶.

Two appraisers are necessary, whatever the amount of the rent, unless the tenant consents to one acting⁷.

1 Under the Distress for Rent Act 1689 s 1 (as amended) (see PARAS 1011 ante, 1044, 1056 post), before a distress could be sold the distrainor was required with the sheriff or under-sheriff or the constable of the hundred or parish to cause the goods to be appraised by two sworn appraisers. So much of the Act as required the assistance of the sheriff, under-sheriff, and constable was repealed by the Parish Constables Act 1872 s 13 (repealed), and the repeal of the rest of the provisions of the Distress for Rent Act 1689 as to appraisement except upon a requirement was effected by the Law of Distress Amendment Act 1888 s 5.

2 See *ibid* s 5. As to the fee see the Distress for Rent Rules 1988, SI 1988/2050, App 1 para 4 (amended by SI 2003/1858). As to the addition to the fee of a sum equal to value added tax see PARA 1058 note 1 post.

3 The reason for appraisement in this case is the Distress for Rent Act 1737 s 8 (amended by the Statute Law Revision Act 1988), which provides that the crops are to be appraised when cut and gathered and not before, and the abolition of appraisement, which was effected by a qualified repeal of the Distress for Rent Act 1689 (see note 1 *supra*), does not refer to the later statute.

4 *Roden v Eyton* (1848) 6 CB 427.

5 See *Lyon v Weldon* (1824) 2 Bing 334 (landlord should not be appointed); *Westwood v Cowne* (1816) 1 Stark 172; *Rocke v Hills* (1887) 3 TLR 298 (bailiff should not be appointed).

6 *Bishop v Bryant* (1834) 6 C & P 484.

7 *Allen v Flicker* (1839) 10 Ad & El 640.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(i) Insolvency/A. IN GENERAL/1020. Legislation.

(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION

(i) Insolvency

A. IN GENERAL

1020. Legislation.

The legislation relating to corporate¹ and individual insolvency² affects a landlord's ability to levy distress.

1 See PARAS 1021-1025 post.

2 See PARAS 1026-1029 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(i) Insolvency/B. CORPORATE INSOLVENCY/1021. Corporate voluntary arrangements and the right to distrain.

B. CORPORATE INSOLVENCY

1021. Corporate voluntary arrangements and the right to distrain.

Where a corporate tenant is subject to a corporate voluntary arrangement¹, the landlord's right to distrain is not affected² except to the extent that the corporate voluntary arrangement may have reduced or removed the liability to pay rent to which the right to distrain relates³.

1 See the Insolvency Act 1986 s 1 (as amended); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 71-72, 108; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARAS 1170-1171.

2 See *McMullen & Sons Ltd v Cerrone* (1993) 66 P & CR 351, [1994] 1 BCLC 152.

3 See *Re Naeem (a bankrupt) (No 18 of 1988)* [1990] 1 WLR 48, [1989] 46 LS Gaz R 37; and cf *March Estates plc v Gunmark Ltd* [1996] 2 BCLC 1, [1996] BPIR 439.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(i) Insolvency/B. CORPORATE INSOLVENCY/1022. Corporate voluntary arrangements and the procedure to avoid distress.

1022. Corporate voluntary arrangements and the procedure to avoid distress.

The creation of a corporate voluntary arrangement does not in itself prevent the superior landlord¹ of the immediate tenant² (where rent of the immediate tenant is in arrear) serving notice pursuant to the Law of Distress Amendment Act 1908 upon any undertenant³ or lodger⁴ stating the amount of rent in arrears and requiring future payments of rent to be made direct to him until the arrears have been duly paid⁵.

1 As to the meaning of 'superior landlord' see PARA 956 note 1 ante.

2 As to the meaning of 'tenant' see PARA 951 note 4 ante.

3 As to the meaning of 'undertenant' see PARA 951 note 2 ante.

4 As to lodgers see PARA 953 ante.

5 See the Law of Distress Amendment Act 1908 s 6; and PARA 960 ante.

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1023. Distress and administration.

Administration is a procedure whereby the court orders the appointment of an administrator over a company's affairs¹. While a company is in administration no legal process (including distress) may be instituted or continued against the company or property of the company except with the consent of the administrator, or with the permission of the court². The company's liability to pay rent is not affected by administration. If the administrator has unreasonably refused to pay rent, the court may give leave to distrain or may refuse leave on terms that rent is paid, and may order the administrator to pay the landlord's costs⁴.

1 See the Insolvency Act 1986 s 8 (as substituted), Sch B1 (as added and amended); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 145 et seq.

2 See *ibid* Sch B1 para 43(6) (as added); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 263. Where the court gives permission for such a transaction, it may impose a condition on or a requirement in connection with the transaction: see Sch B1 para 43(7) (as added); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 263.

4 See *Re Atlantic Computer Systems plc* [1992] Ch 505, [1992] 1 All ER 476, CA.

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1024. Staying distress during voluntary liquidation.

Where a tenant company is in voluntary liquidation¹, a landlord is not prevented from distraining². However, the liquidator, any contributory or any creditor may apply to the court to determine any question³ and the court may stay any distress⁴. In the absence of circumstances outside the levying of distress, such as fraud or unfair dealing, the court does not usually stay distress commenced before voluntary liquidation⁵. The court usually stays distress commenced after the commencement of liquidation⁶.

1 See the Insolvency Act 1986 Pt I (ss 1-7B) (as amended), Pt IV Chs I-V (ss 73-116) (as amended); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 939 et seq.

2 See *Westbury v Twigg & Co Ltd* [1892] 1 QB 77, DC. See also COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1014.

3 See the Insolvency Act 1986 s 112(1); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1012.

4 *Re Higginshaw Mills and Spinning Co* [1896] 2 Ch 544, CA; *Herbert Berry Associates Ltd v IRC* [1978] 1 All ER 161, [1977] 1 WLR 1437, HL.

5 *Venner's Electrical Cooking and Heating Appliances Ltd v Thorpe* [1915] 2 Ch 404 at 408, CA, per Neville J.

6 *Re Margot Bywaters Ltd* [1942] Ch 121, [1941] 3 All ER 471. See also COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1014.

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1025. Staying distress during compulsory liquidation.

Where a petition for the winding-up of a company is presented¹, a distress begun before the presentation of the petition is not affected but the company, any contributory or any creditor may thereafter apply to the court to stay the distress². However, when a winding-up order has been made, distress may not be proceeded with or commenced against the company except with the leave of the court³. The court will usually allow distress begun before the commencement of the winding-up of a company to be completed⁴. Distress begun after the commencement of the winding-up is void⁵ unless the court gives leave for distress as a claim or proceeding against the company or its property⁶. Leave is not normally given for distress for rent accrued prior to the commencement of winding-up⁷. Leave is usually given for distress for rent falling due during the liquidation, at least where the liquidator is using or retaining the property for the purposes of the liquidation⁸. Leave, however, may be refused if the use of the property by the liquidator benefits the landlord⁹. Further leave is generally not given to distrain for rent due in advance¹⁰.

The landlord's distress is not interfered with if there is no privity between the landlord and the company upon whose goods distress is levied. Thus distress may be levied on the goods of a third party which happen to be on the insolvent tenant's premises¹¹ or when an insolvent company happens to have chattels on the premises of a tenant against whom its landlord levies distress¹².

1 See the Insolvency Act 1986 Pt IV Ch VI (ss 117-160) (as amended); and see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 438 et seq.

2 See *ibid* s 126(1); *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 887.

3 See the Insolvency Act 1986 s 130(2); and *Re Memco Engineering Ltd* [1986] Ch 86, [1985] 3 All ER 267.

4 *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA; *Re Bellaglade Ltd* [1977] 1 All ER 319.

5 See the Insolvency Act 1986 s 128(1); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 888.

6 See *ibid* s 130(2); *Re Coal Consumers Association* (1876) 4 ChD 625; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 893.

7 *Re Traders' North Staffordshire Carrying Co, ex p North Staffordshire Rly Co* (1874) LR 19 Eq 60; *Re Coal Consumers Association* (1876) 4 ChD 625; *Re North Yorkshire Iron Co* (1878) 7 ChD 661; *Re Bridgewater Engineering Co* (1879) 12 ChD 181.

8 *Re Lundy Granite Co, ex p Heaven* (1871) 6 Ch App 462; *Re Silkstone and Dodworth Coal and Iron Co* (1881) 17 ChD 158.

9 *Re Bridgewater Engineering Co* (1879) 12 ChD 181.

10 *Shackell & Co v Chorlton & Sons* [1895] 1 Ch 378.

11 See *Re Traders' North Staffordshire Carrying Co, ex p North Staffordshire Rly Co* (1874) LR 19 Eq 60. See also *Re New City Constitutional Club Co, ex p Purssell* (1887) 34 ChD 646, CA.

12 See *Re Lundy Granite Co, ex p Heaven* (1871) 6 Ch App 462; *Re Carriage Co-Operative Supply Association, ex p Clemence* (1883) 23 ChD 154.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(i) Insolvency/C. INDIVIDUAL INSOLVENCY/1026. Individual voluntary arrangements and the right to distrain.

C. INDIVIDUAL INSOLVENCY

1026. Individual voluntary arrangements and the right to distrain.

Where an individual tenant is subject to an individual voluntary arrangement¹, the landlord's right to distrain is not affected² except to the extent that the individual voluntary arrangement may have reduced or removed the liability to pay rent to which the right to distrain relates³.

1 See the Insolvency Act 1986 Pt VIII (ss 252-263G) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 82 et seq.

2 See *McMullen & Sons Ltd v Cerrone* (1993) 66 P & CR 351.

3 See *Re Naeem (a bankrupt) (No 18 of 1988)* [1990] 1 WLR 48, [1989] 46 LS Gaz R 37.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(i) Insolvency/C. INDIVIDUAL INSOLVENCY/1027. Individual voluntary arrangements and the procedure to avoid distress.

1027. Individual voluntary arrangements and the procedure to avoid distress.

The outcome of an individual voluntary arrangement does not in itself prevent the superior landlord¹ of the immediate tenant² (where rent of the immediate tenant is in arrear) serving notice pursuant to the Law of Distress Amendment Act 1908 upon any undertenant³ or lodger⁴ stating the amount of rent in arrears and requiring future payments of rent to be made direct to him until the arrears have been duly paid⁵.

1 As to the meaning of 'superior landlord' see PARA 956 note 1 ante.

2 As to the meaning of 'tenant' see PARA 951 note 4 ante.

3 As to the meaning of 'undertenant' see PARA 951 note 2 ante.

4 As to lodgers see PARA 953 ante.

5 See the Law of Distress Amendment Act 1908 s 6; and PARA 960 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(i) Insolvency/C. INDIVIDUAL INSOLVENCY/1028. Distress and administration.

1028. Distress and administration.

The county court has jurisdiction to make an administration order in relation to individual debtors¹. Where an administration order² is in force a creditor may not present a bankruptcy petition³ without the leave of the court and unless certain conditions are satisfied⁴ or have any remedy against the person or property of the debtor in respect of debts notified to the court or included in the court order, without the leave of the court⁵. A landlord may distrain for rent after the date of the order but only in respect of up to six months' rent accrued before that date⁶.

1 See the County Courts Act 1984 Pt VI (ss 112-117) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 893 et seq. See also COURTS vol 10 (Reissue) PARA 721.

2 As to administration orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 863 et seq.

3 As to bankruptcy petitions see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 124 et seq.

4 See the County Courts Act 1984 s 112(4) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 896. See also s 112(4A), 112A (both prospectively added); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 896.

5 See *ibid* s 114(1); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 896.

6 See *ibid* s 116; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 898.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(i) Insolvency/C. INDIVIDUAL INSOLVENCY/1029. Distress and bankruptcy.

1029. Distress and bankruptcy.

The presentation of a bankruptcy petition, the making of a bankruptcy order¹ and the appointment of a trustee in bankruptcy in whom the lease rests², do not prevent the landlord exercising his remedy of distress. The landlord, however, is limited to a maximum of six months' rent accrued due before the bankruptcy is commenced³ and any sum recovered in excess is held for the bankrupt or his estate⁴. This limit does not apply to distress levied upon chattels of third parties found upon the premises⁵. There is no limit on the amount of rent accruing after the commencement of bankruptcy for which distress can be levied⁶. The right to distrain upon the debtor's goods will cease upon his discharge from bankruptcy⁷.

¹ See *Re Fanshaw & Yorston, ex p Birmingham and Staffordshire Gaslight Co* (1871) LR 11 Eq 615; and cf *Smith v Braintree District Council* [1990] 2 AC 215, [1989] 3 All ER 897, HL.

² See *Re Binns, ex p Hale* (1875) 1 ChD 285; the Insolvency Act 1986 s 347(9); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 686. As to bankruptcy petitions see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 124 et seq.

³ See *ibid* s 347(1) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 686.

⁴ See *ibid* s 347(2); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 686.

⁵ *Brocklehurst and Lowe v Lawe* (1857) 7 E & B 176; *Railton v Wood* (1890) 15 App Cas 363, PC; *Tomlinson v Consolidated Credit and Mortgage Corp'n* (1890) 24 QBD 135, CA.

⁶ *Re Binns, ex p Hale* (1875) 1 ChD 285; *Re Wells* [1929] 2 Ch 269.

⁷ See the Insolvency Act 1986 s 347(5); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 691.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(ii) Corporate and Individual Receivership/1030. Types of receivership.

(ii) Corporate and Individual Receivership

1030. Types of receivership.

There are two types of receivership¹ which are applicable in the same manner both to companies and to individuals: (1) receivership of a mortgaged legal estate²; and (2) receivers appointed by the court³.

1 See generally RECEIVERS.

2 See COMPANIES vol 15 (2009) PARAS 1333 et seq, 1359 et seq; MORTGAGE vol 77 (2010) PARAS 475-484.

3 See the Supreme Court Act 1981 (prospectively renamed the Senior Courts Act 1981) s 37; and CIVIL PROCEDURE. See also the Landlord and Tenant Act 1987 Pt II (ss 21-24) (as amended) (appointment of managers by a leasehold valuation tribunal); and LANDLORD AND TENANT.

UPDATE

1030 Types of receivership

NOTE 3--Supreme Court Act 1981 cited as Senior Courts Act 1981 as from 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(ii) Corporate and Individual Receivership/1031. Landlord's entitlement to distrain.

1031. Landlord's entitlement to distrain.

The appointment of a receiver over the tenant's property does not affect the tenant's liability for rent¹ and the landlord is entitled to distrain². If the receiver is appointed by the court, it seems that the landlord ought to apply to the court for leave before executing a distress warrant³. If distress has been commenced before the receiver is appointed, the landlord need not apply for leave to proceed with the distress⁴.

1 *George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900, [1974] 1 WLR 462, CA; *AMEC Properties Ltd v Planning Research and Systems plc* [1992] BCLC 1149, [1992] 1 EGLR 70, CA.

2 *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA.

3 *Re Sutton's Estate, Sutton v Rees* (1863) 9 Jur NS 456; *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104 at 118. The application should be made within the claim in which the receiver was appointed: *Searle v Choat* (1884) 25 ChD 723, CA.

4 *Engel v South Metropolitan Brewing and Bottling Co* [1891] WN 31; *Evelyn v Lewis* (1844) 3 Hare 472 at 475.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1032. Execution against tenant.

(iii) Execution

1032. Execution against tenant.

The levying of an execution upon the goods of a tenant places them in the custody of the law and protects them from distress by the landlord¹, except in the case of distress by the Crown² or when the execution is collusive³. The execution creditor may, however, waive his rights⁴.

In general, even though the landlord may not distrain on goods seized in execution, goods seized by the sheriff under an execution in the High Court⁵ are by statute forbidden to be removed off the premises until any arrears of rent (not exceeding one year's rent) have been paid by the execution creditor⁶. This statutory provision does not apply to executions at the suit of the landlord⁷, or so as to enable a ground landlord to claim the benefit of the Landlord and Tenant Act 1709 on an execution against an underlessee⁸. A sequestration has, however, been treated as an execution within the equity of the statute⁹, and a landlord's claim for rent will, by order of the court, be paid out of the proceeds of a sequestration if he might have distrained¹⁰. The provision is not confined to goods and chattels which are distrainable in point of law, but casts the duty upon the sheriff to take care that the goods seized are not removed until the provision is complied with¹¹. In as much as the goods of a stranger are not liable to execution, the statute confers on the sheriff no power to seize such goods or to apply the proceeds of their sale in payment of the rent¹². Should he seize and remove goods belonging to a stranger, he will be liable for a year's arrears of rent, as he has taken off the premises that which the landlord had the right to distrain¹³, and he will also be liable to account to the real owner whether he has paid the landlord or not¹⁴. If two executions are levied the landlord cannot have a year's rent on each¹⁵.

1 *Re Mackenzie, ex p Sheriff of Hertfordshire*[1899] 2 QB 566 at 573, CA; and see Co Litt 47a; *Wharton v Naylor*(1848) 12 QB 673; *Lewis v Davies*[1914] 2 KB 469, CA. The provision forbidding the removal of goods by the sheriff without paying one year's rent (see the text to notes 5-6 infra) does not authorise a distraint on goods in the custody of the law: *Wharton v Naylor*(1848) 12 QB 673 at 679. See also CIVIL PROCEDURE vol 12 (2009) PARA 1352.

2 *R v Cotton* (1751) Park 112 (confirming *R v Dale* (1719) Bunb 42); *A-G v Leonard*(1888) 38 ChD 622; and see also *R v Hill* (1818) 6 Price 19.

3 *Smith v Russell* (1811) 3 Taunt 400.

4 *Seven v Mihill* (1756) 1 Keny 370.

5 The Landlord and Tenant Act 1709 s 1 (as amended) does not apply to executions in the county court: see the County Courts Act 1984 s 102(1); and CIVIL PROCEDURE vol 12 (2009) PARA 1353. When goods are seized under county court process the landlord may claim rent in arrear under s 102(2): see PARA 1041 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1353. As to the office of sheriff see generally SHERIFFS.

6 See the Landlord and Tenant Act 1709 s 1 (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1352. The levying of a distress for rates, although analogous to execution (see PARA 904 ante) is not 'execution' within this provision, so as to be subject to the landlord's priority: *Potts v Hickman*[1941] AC 212, [1940] 4 All ER 491, HL. As to weekly and other tenancies for less than a year see PARA 1040 post. As to the effect of the bankruptcy of the tenant see PARA 1029 ante. As to the effect of the liquidation of a tenant company on the landlord's right see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 888. As to the necessity of notice of the landlord's rights to the sheriff see PARA 1036 post. A receiver may be a landlord within the Landlord and Tenant Act 1709 s 1 (as amended): see *Cox v Harper*[1910] 1 Ch 480, CA.

- 7 *Taylor v Lanyan* (1830) 6 Bing 536 at 544.
- 8 *Bennet's Case* (1727) 2 Stra 787; *Re Eastcheap Alimentary Products Ltd* [1936] 3 All ER 276; and cf *Thurgood v Richardson* (1831) 7 Bing 428 (statutory provision applicable between lessees and undertenant).
- 9 *Dixon v Smith* (1818) 1 Swan 457. A sequestration does not prevent a distress upon the goods of the contemnor by the landlord (*Dixon v Smith* supra) or the removal of his chattels from the premises (*Desbrow v Crommie* (1729) 1 Barn KB 212).
- 10 *Dixon v Smith* (1818) 1 Swan 457.
- 11 *Riseley v Ryle* (1843) 11 M & W 16; and see *Smallman v Pollard* (1844) 6 Man & G 1001 at 1009.
- 12 *Beard v Knight* (1858) 8 E & B 865.
- 13 *Forster v Cookson* (1841) 1 QB 419.
- 14 *White v Binstead* (1853) 13 CB 304.
- 15 *Dod v Saxby* (1735) 2 Stra 1024.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1033. When restriction upon removal obtains.

1033. When restriction upon removal obtains.

Further, it may be taken to be established that the restriction upon removal¹ does not apply except in the case of a subsisting tenancy²; but, provided it is subsisting, it may be a tenancy created by an attornment in a mortgage deed³, or by a stipulation in a purchase agreement under which the purchaser takes possession and pays a fixed yearly rent until completion⁴.

The tenancy must be one to which the right of distress is incident, that is to say it must be at a rent certain for which there is a present right to distrain⁵.

The rent must be rent actually due at the time of seizure⁶, and not that which accrues afterwards, though possession is retained by the sheriff⁷. If it is due it is immaterial that it is reserved payable in advance⁸, and the full rent may be claimed though the landlord has been accustomed to remit a portion to the tenant⁹. If the landlord is induced to withdraw a distress on the tenant's false assurance that a particular debt is satisfied, and subsequently execution is levied for the debt, the landlord is entitled to his year's rent¹⁰. The landlord protected is the person immediately entitled to the rent, or the person who has a title upon which he can bring a claim for recovery of land¹¹.

1 See the Landlord and Tenant Act 1709 s 1 (as amended); and PARA 1032 ante.

2 *Cox v Leigh* (1874) LR 9 QB 333; *Hodgson v Gascoigne* (1821) 5 B & Ald 88; *Lewis v Davies* [1914] 2 KB 469, CA. It does not, therefore, apply when the tenancy has determined before the seizure, though within six months of it: *Cox v Leigh* (1874) LR 9 QB 333.

3 *Yates v Ratledge* (1860) 5 H & N 249.

4 *Saunders v Musgrave* (1827) 6 B & C 524.

5 *Riseley v Ryle* (1843) 11 M & W 16 at 25.

6 *Gwilliam v Barker* (1815) 1 Price 274.

7 *Hoskins v Knight* (1813) 1 M & S 245; *Reynolds v Barford* (1844) 7 Man & G 449; *Re Davis, ex p Pollen Trustees* (1885) 55 LJQB 217.

8 *Harrison v Barry* (1819) 7 Price 690.

9 *Williams v Lewsey* (1831) 8 Bing 28.

10 *Wollaston v Stafford* (1854) 15 CB 278.

11 *Colyer v Speer* (1830) 2 Brod & Bing 67 at 69. A claim may be brought by the administrator of the landlord (*Palgrave v Windham* (1719) 1 Stra 212), provided administration has been granted and demand of the rent made before the goods have been removed (*Waring v Dewberry* (1718) 1 Stra 97).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1034. Removal of goods by sheriff.

1034. Removal of goods by sheriff.

The sheriff does not infringe the statutory provision¹ unless he removes or permits the removal of the goods without satisfying the rent². There must be an actual or constructive removal. It is not sufficient that the goods have been seized and sold if there has been no removal³. The statutory provision is infringed, however, by the removal of any portion of the goods seized⁴; and, once removed, the wrong cannot be purged by the subsequent return of the goods to the premises⁵. A landlord waives the benefit of the statute by consenting to the removal, even if consent is given upon the faith of an undertaking to pay the rent which is unfulfilled⁶.

1 The Landlord and Tenant Act 1709 s 1 (as amended): see PARA 1032 ante.

2 *Re Davis, ex p Pollen Trustees* (1885) 55 LJQB 217. As to the office of sheriff see generally SHERIFFS.

3 *Smallman v Pollard* (1844) 6 Man & G 1001; *White v Binstead* (1853) 13 CB 304.

4 *Colyer v Speer* (1820) 2 Brod & Bing 67.

5 *Lane v Crockett* (1819) 7 Price 566, Ex Ch; *Wren v Stokes* [1902] 1 IR 167, CA.

6 *Rotherey v Wood* (1811) 3 Camp 24.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1035. Relinquishing possession.

1035. Relinquishing possession.

If the sheriff relinquishes possession of the goods, the possession reverts to the original owner, and they may be distrained¹. They are likewise distrainable if not removed within a reasonable time after sale by the sheriff².

¹ *Ackland v Paynter* (1820) 8 Price 95; *Re Mackenzie, ex p Sheriff of Hertfordshire* [1899] 2 QB 566 at 575, CA. See also *Cropper v Warner* (1883) Cab & El 152 (temporary withdrawal pending interpleader proceedings); *Blades v Arundale* (1813) 1 M & S 711; *St John's College, Oxford v Murcott* (1797) 7 Term Rep 259 at 263-264. For a consideration of the meaning of abandonment of possession by the sheriff see *Lloyds and Scottish Finance Ltd v Modern Cars and Caravans (Kingston) Ltd* [1966] 1 QB 764, [1964] 2 All ER 732; and see also *National Commercial Bank of Scotland Ltd v Arcam Demolition and Construction Ltd* [1966] 2 QB 593, [1966] 2 All ER 113, CA; and CIVIL PROCEDURE vol 12 (2009) PARA 1330. As to abandonment in cases of distress see PARA 1061 post. As to the office of sheriff see generally SHERIFFS.

² *Re Davis, ex p Pollen Trustees* (1885) 55 LJQB 217; *Peacock v Purvis* (1820) 2 Brod & Bing 362 at 367; *Wright v Dewes* (1834) 1 Ad & El 641.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1036. What is sufficient notice to sheriff.

1036. What is sufficient notice to sheriff.

The sheriff is under no obligation to inquire whether any rent is in arrear, and he is under no liability to the landlord for not keeping the goods, unless informed that rent is due¹. If, however, the sheriff has notice before the goods are removed that rent is due to the landlord, and nevertheless does not keep the goods on the premises, but sells them without paying the landlord, the sheriff becomes liable to the landlord for the wrongful removal². Express notice is not necessary, it is sufficient if the sheriff has knowledge of the claim³; and, if he is informed by notice that rent is due, the form of the notice is not material⁴. The notice is in time while the goods or the proceeds of sale remain in the sheriff's hands⁵. When the claim is made by the landlord the sheriff must ascertain that the relationship of landlord and tenant exists, and that rent is really due, and he is entitled to see the lease if there is one⁶. If the relationship is established, slight proof of rent in arrear will generally be accepted, but he is bound as between himself and the execution creditor to ascertain whether the rent is due⁷.

1 *Re Mackenzie, ex p Sheriff of Hertfordshire* [1899] 2 QB 566 at 574, CA; *Waring v Dewberry* (1718) 1 Stra 97; *Palgrave v Windham* (1719) 1 Stra 212 at 214; *Arnitt v Garnett* (1820) 3 B & Ald 440. As to the office of sheriff see generally SHERIFFS.

2 *Re Mackenzie, ex p Sheriff of Hertfordshire* [1899] 2 QB 566, CA; *Riseley v Ryle* (1843) 11 M & W 16; *Andrews v Dixon* (1820) 3 B & Ald 645.

3 *Andrews v Dixon* (1820) 3 B & Ald 645.

4 *Colyer v Speer* (1820) 2 Brod & Bing 67.

5 *Arnitt v Garnett* (1820) 3 B & Ald 440.

6 *Augustien v Challis* (1847) 1 Exch 279; *Keightley v Birch* (1814) 3 Camp 521.

7 *Frost v Barclay* (1887) 3 TLR 617 at 618, DC.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1037. Goods not to be sold after notice, until rent paid.

1037. Goods not to be sold after notice, until rent paid.

Where notice has been given to the sheriff by the landlord that rent is due, the sheriff should call upon the execution creditor to pay it¹, and should refuse to sell any of the goods until it is paid; even if there are goods upon the demised premises of a value many times exceeding the amount of rent due, his duty is the same, and he should refuse to sell the smallest part of the goods until the claim of the landlord is satisfied². The landlord's claim must be paid without any deduction for sheriff's fees³. The sheriff is not bound to advance the money to pay the rent out of his own pocket. If the execution creditor declines to advance it, the sheriff may refuse to sell⁴; but if the sheriff is willing to do so, he may sell, pay the landlord's rent and apply the surplus, if any, in satisfaction of the debt⁵, and if there is no surplus may return nulla bona⁶. If no one will pay the landlord's rent the sheriff can withdraw and return nulla bona⁷. When the goods on the premises are not sufficient to satisfy the rent lawfully demanded the sheriff should withdraw⁸. When he withdraws, the landlord can distrain for his whole rent⁹.

1 In Ireland it has been held that the sheriff is not bound to notify the judgment creditor of the landlord's claim: see *Davidson v Allen* (1886) 20 LR Ir 16. As to the office of sheriff see generally SHERIFFS.

2 *Thomas v Mirehouse* (1887) 19 QBD 563 at 566, DC, per Lord Esher MR.

3 *Gore v Gofton* (1725) 1 Stra 643.

4 *Cocker v Musgrove and Moon* (1846) 9 QB 223 at 234; *Thomas v Mirehouse* (1887) 19 QBD 563 at 566, DC.

5 *Cocker v Musgrove and Moon* (1846) 9 QB 223 at 234; *Thomas v Mirehouse* (1887) 19 QBD 563 at 566, DC; *Wintle v Freeman* (1841) 11 Ad & El 539.

6 See CIVIL PROCEDURE.

7 *Wintle v Freeman* (1841) 11 Ad & El 539; *Re Mackenzie, ex p Sheriff of Hertfordshire* [1899] 2 QB 566 at 575, CA.

8 *Foster v Hilton* (1831) 1 Dowl 35.

9 *Re Mackenzie, ex p Sheriff of Hertfordshire* [1899] 2 QB 566 at 575, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1038. Liability for wrongful removal etc.

1038. Liability for wrongful removal etc.

If the sheriff infringes the statutory restriction¹ and permits the removal of the goods before the rent is paid, and in consequence the landlord loses any part of his rent, the sheriff is liable at the suit of the landlord for wrongful removal without paying him²; and also for a negligent sale of the goods whereby the landlord is damnified³.

The landlord has no right to require the goods to be sold for his benefit, and if they are sold he cannot maintain a claim against the sheriff for money had and received⁴. No claim will lie against the execution creditor, as he has nothing to do with the removal of the goods⁵.

¹ lie under the Landlord and Tenant Act 1709 s 1 (as amended): see PARA 1032 ante. As to the office of sheriff see generally SHERIFFS.

² *Re Mackenzie, ex p Sheriff of Hertfordshire* [1899] 2 QB 566 at 575, CA; *Thomas v Mirehouse* (1887) 19 QBD 563, DC; *Calvert v Joliffe* (1831) 2 B & Ad 418. In such a claim the landlord need only prove the fact of occupation; the burden of proving payment of the rent lies upon the sheriff: *Harrison v Barry* (1819) 7 Price 690.

³ *Groombridge v Fletcher* (1834) 2 Dowl 353.

⁴ *Re Mackenzie, ex p Sheriff of Hertfordshire* [1899] 2 QB 566, CA; *Green v Austin* (1812) 3 Camp 260.

⁵ *Cocker v Musgrove and Moon* (1846) 9 QB 223.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1039. Measure of damages.

1039. Measure of damages.

The measure of damages in a claim against the sheriff at the suit of the landlord is prima facie the amount of rent due¹, but it is competent to the sheriff to prove in mitigation of damages that the real value of the goods removed was not sufficient to pay the rent. All that the landlord has to prove is that the rent is in arrear, that the sheriff has had notice of this, and that he has notwithstanding removed the goods. It then lies on the sheriff to show that the value of the goods removed was less than the rent to reduce his liability².

1 le not exceeding a year, or six months if the tenant is bankrupt: see PARAS 1029, 1032 ante. As to the office of sheriff see generally SHERIFFS.

2 *Thomas v Mirehouse* (1887) 19 QBD 563, DC.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1040. Claims for rent where goods seized in execution: High Court.

1040. Claims for rent where goods seized in execution: High Court.

In the case of weekly and other tenancies for less than a year the arrears of rent which may be claimed upon an execution¹ are further limited, for no landlord of any tenement let at a weekly rent has a claim or lien upon any goods taken in execution under the process of any court of law for more than four weeks' arrears of rent; and if such tenement is let for any term less than a year other than a weekly term the landlord has no claim or lien on the goods for more than the arrears of rent accruing during four such terms or times of payment².

¹ See PARA 1032 ante.

² Execution Act 1844 s 67 (amended by the Statute Law Revision Act 1891). This provision is repealed, except in so far as it relates to the process of the High Court: see the Supreme Court Act 1981 (prospectively renamed the Senior Courts Act 1981) s 152(4), Sch 7. County court executions are governed by the County Courts Act 1984 s 102 (as amended): see PARA 1041 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1353.

UPDATE

1040 Claims for rent where goods seized in execution: High Court

NOTE 2--Supreme Court Act 1981 cited as Senior Courts Act 1981 as from 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1041. Claims for rent where goods seized in execution: county court.

1041. Claims for rent where goods seized in execution: county court.

Under the county court process the landlord is protected by different provisions¹.

The bailiff must sell under the execution and distress such of the goods as satisfies the claim of the landlord, and the landlord is protected in respect of arrears of rent to the following extent: (1) in a case where the tenement is let by the week, four weeks' rent; (2) in a case where the tenement is let for any other term less than a year, the rent of two terms of payment; (3) in any other case, one year's rent².

The landlord of any tenement in which any goods are seized may claim the rent of the tenement in arrear at the date of the seizure, at any time within the five days following that date, or before the removal of the goods, by delivering to the bailiff or officer making the levy a claim in writing, signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the period in respect of which the rent is due³. Where such a claim is made, the bailiff or officer making the levy must in addition distrain for the rent so claimed and the cost of the distress, and must not, within five days after the distress, sell any part of the goods seized, unless the goods are of a perishable nature, or the person whose goods have been seized so requests in writing⁴. After the period of five days, the bailiff must sell under execution and distress such of the goods as will satisfy, first, the costs of and incidental to the sale; next, the claim of the landlord not exceeding the amounts set out in heads (1) to (3) above; and lastly, the amount for which the warrant of execution is issued⁵.

1 See the County Courts Act 1984 s 102(1); para 1032 ante; and CIVIL PROCEDURE VOL 12 (2009) PARA 1353. As to claims in the High Court see PARA 1040 ante.

2 See *ibid* s 102(4)(b).

3 *Ibid* s 102(2).

4 *Ibid* s 102(3).

5 *Ibid* s 102(4).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1042. Agricultural produce and farming animals.

1042. Agricultural produce and farming animals.

Where, under the Sale of Farming Stock Act 1816, a sheriff has sold any crop or produce under an agreement that the purchaser will expend the crop or produce for the benefit of the land, the landlord may not distrain on any corn, hay, straw or other produce which has been severed at the time of such agreement, or on any turnips drawn or growing thus sold, or on any horses, sheep, or other cattle or beasts, or on any wagons or other implements of husbandry kept or used on the land for the purpose of carrying out the agreement¹.

¹ See the Sale of Farming Stock Act 1816 ss 3, 6 (both as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1321. The restriction applies where the produce has been severed before sale: see *Wright v Dewes* (1834) 1 Ad & El 641 at 652 per Littledale J. As to the interpretation of this statute see *Hutt v Morrell* (1848) 11 QB 425. As to distress on growing crops see PARA 1043 post. As to distress for rent on agricultural holdings see AGRICULTURAL LAND vol 1 (2008) PARAS 346-348. As to the office of sheriff see generally SHERIFFS.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(11) EFFECT OF INSOLVENCY, RECEIVERSHIP AND EXECUTION/(iii) Execution/1043. Growing crops.

1043. Growing crops.

Where growing crops are seized and sold by a sheriff or other officer in execution, such crops, as long as they remain on the land, are subject to distress for rent which may accrue due to the landlord after any seizure and sale, but only in default of other sufficient distress¹.

¹ See the Landlord and Tenant Act 1851 s 2. As to the office of sheriff see generally SHERIFFS.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(i) In general/1044. Sale of distress.

(12) SALE OF DISTRESS

(i) In general

1044. Sale of distress.

Any goods distrained for rent, which have not been replevied within five days after the distress and notice thereof, may be sold for the best price that can be obtained, towards satisfaction of the rent¹.

Sale is optional and not imperative, and no claim lies against a landlord for not selling²; otherwise a landlord could never relinquish a distress by agreement with his tenant. Apparently, however, sheaves or cocks of corn or corn loose or in the straw or hay and growing crops³ must, in default of replevy, be sold under and subject to the statutory provisions⁴.

1 Distress for Rent Act 1689 s 1 (amended by the Statute Law Revision Act 1948); Distress for Rent Act 1737 s 10; Co Litt (Hargrave and Butler Edn) 47b note 305; Com Dig Distress (D8); 3 Bl Com (14th Edn) 14. For the calculation of the five days and as to extension of the time for sale see PARA 1049 post. As to replevin see PARA 1081 et seq post. See also PARA 1046 post.

2 *Philpott v Lehain* (1876) 35 LT 855 (confirming *Lear v Edmonds* (1817) 1 B & Ald 157 and *Hudd v Ravenor* (1821) 2 Brod & Bing 662). The words 'shall' and 'may' in the Distress for Rent Act 1689 s 1 (as amended) are held to be permissive only, and not compulsory; but see PARA 1049 text to note 6 post.

3 As to the provisions rendering sheaves and cocks of corn etc and growing crops distrainable see PARA 929 ante.

4 See *Piggott v Birtles* (1836) 1 M & W 441 at 448. As to the time and place of sale see PARAS 1049-1053 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(i) In general/1045. No claim before sale.

1045. No claim before sale.

Until the sale the existence of a distress is an answer to a claim for the rent distrained for, whether the distress is sufficient or not to satisfy the amount for which the distress is levied; for until sale, while the distress is being held, the debt from the tenant is suspended although the property in the goods is not divested¹.

On the sale of the distress, the proceeds of the sale are an instantaneous executed satisfaction of the rent, vesting to that amount in the landlord, and the tenant has only an interest in any surplus². If the proceeds of the sale are insufficient to satisfy the landlord's claim, the landlord can recover the balance due by claim or otherwise³.

1 *Lehain v Philpott* (1875) LR 10 Exch 242 (in which the earlier authorities are reviewed). The tenant, before sale, if he wishes to avoid sale, must take proceedings in replevin, and by adoption of the principle stated in the text two concurrent claims on the same point are avoided. As to the property not being divested see also *Iredale v Kendall* (1878) 40 LT 362 at 363 per Lopes J. As to replevin see PARA 1081 et seq post.

2 *Moore v Pyrke* (1809) 11 East 52. For the effect of this on the undertenant's right to be reimbursed see PARA 1057 post.

3 *Philpott v Lehain* (1876) 35 LT 855; and see *Lehain v Philpott* (1875) LR 10 Exch 242 at 245-246.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(i) In general/1046. Matters prior to sale.

1046. Matters prior to sale.

Until sale, whether the statutory five days¹ have elapsed or not, and even if the goods have been removed from the premises, the tenant has the right to replevy them, for at common law the goods were at all times repleviable, and the statute did not change this right, until the property passed by sale². A landlord ought not to sell the goods after a tender of the rent and costs has been made at any time within the five days, and if he does so he will be liable in damages to the tenant³.

An agreement between a tenant and the distrainor relating to the disposition of the goods seized does not debar the tenant from claiming damages for excessive distress⁴.

1 See PARAS 1044 ante, 1049 post. As to extension of the five days see PARA 1049 post.

2 *Jacob v King* (1814) 5 Taunt 451. As to replevin see PARA 1081 et seq post.

3 *Johnson v Upham* (1859) 2 E & E 250 (overruling *Ellis v Taylor* (1841) 8 M & W 415). The decision in *Johnson v Upham* supra is based on an equitable construction beneficial to the tenant of the enactments which confer on the landlord a power of sale: see PARA 1044 note 1 ante. If the decision had been otherwise, the only way for the tenant to seek to prevent a sale of goods seized and impounded would be a claim for replevin in which he would necessarily be defeated: *Johnson v Upham* supra at 264. The decision forms an exception to the general rule (see *Firth v Purvis* (1793) 5 Term Rep 432; *Ladd v Thomas* (1840) 12 Ad & El 117; *Tennant v Field* (1857) 8 E & B 336) that a tender after impounding is bad. As to impounding see PARA 1013 et seq ante.

4 *Sells v Hoare* (1824) 1 Bing 401; *Willoughby v Backhouse* (1824) 2 B & C 821; and see PARA 1080 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(i) In general/1047. Irregularity in sale.

1047. Irregularity in sale.

An irregularity in the sale will make the landlord liable to account not merely for the proceeds, but for the value of the goods, and the tenant will be entitled by way of surplus to the full value of the goods less the rent and charges¹. The value in such a case is a question of fact, and the price reached at an admittedly fair sale is not conclusive²; but no damages can be recovered if no actual damage has accrued³, or if the sale is wholly void⁴.

1 *Biggins v Goode* (1832) 2 Cr & J 364 (sale without appraisement); *Whitworth v Maden* (1847) 2 Car & Kir 517 (no notice of distress); *Clark v Holford* (1848) 2 Car & Kir 540 (excessive distress); *Knight v Egerton* (1852) 7 Exch 407 (sale without appraisement). As to notice see PARAS 1011-1012 ante. As to appraisement see PARA 1019 ante. As to remedies for irregular distress see PARA 1095 post.

2 *Smith v Ashforth* (1860) 29 LJ Ex 259 at 260 per Martin B.

3 *Rodgers v Parker* (1856) 18 CB 112; *Lucas v Tarleton* (1858) 3 H & N 116 (where no damage had accrued owing to a sale too soon by one day); and see *Proudlove v Twemlow* (1833) 1 Cr & M 326.

4 *Owen v Legh* (1820) 3 B & Ald 470 (a case of premature sale of standing corn and growing crops); and see PARA 1050 post. See also *Beck v Denbigh* (1860) 29 LJCP 273.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(i) In general/1048. Bailiff may not sell to cover fees.

1048. Bailiff may not sell to cover fees.

After a landlord has directed a bailiff to withdraw, the landlord's claim being satisfied, a bailiff may not sell any of the tenant's goods for the payment of his own fees and expenses, and if he does so sell he confers no title on the purchaser¹.

¹ *Harding v Hall* (1866) 14 LT 410. See also PARA 991 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(ii) Time, Place and Price/1049. Time for sale.

(ii) Time, Place and Price

1049. Time for sale.

The sale may not be held until five days have elapsed from the taking of the distress and notice thereof¹. The five days must be reckoned exclusively of the day of seizure², so that the sale cannot take place until the sixth day from the seizure. These five days³ within which the tenant or owner of the goods distrained is entitled to replevy are extended to a period of not more than 15 days if the tenant or owner of the goods makes a written request to the landlord or other person making the levy and also gives security for any additional cost occasioned by such extension of time⁴. The landlord or such person may, however, with the written request or consent of the tenant or the owner, sell the goods and chattels distrained or part of them at any time before the expiration of the extended period⁵. A landlord may remain in possession for an extended period at the tenant's request; such an arrangement, however, might, as affecting the rights of third parties, be found collusive⁶.

1 See the Distress for Rent Act 1689 s 1 (as amended); and PARA 1044 ante. As to notice of distress see PARAS 1011-1012 ante.

2 *Robinson v Waddington*(1849) 13 QB 753; and see TIME vol 97 (2010) PARA 329.

3 As to replevin see PARA 1081 et seq post. See also PARA 1046 ante.

4 Law of Distress Amendment Act 1888 s 6. The security to be given by the replevisor is settled by the county court district judge: see PARAS 1084-1085 post.

5 Ibid s 6 proviso.

6 *Harrison v Barry* (1819) 7 Price 690. In *Fisher v Algar* (1826) 2 C & P 374, it was held that, if the distrainor did not know which were the tenant's goods and which were a lodger's goods, the tenant's request would justify the distrainor in detaining all the goods beyond what would otherwise have been the proper time limit; but this decision has been criticised. As to the statutory protection of the goods of lodgers see PARA 951 et seq ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(ii) Time, Place and Price/1050. Growing crops and sheaves of corn.

1050. Growing crops and sheaves of corn.

Growing crops cannot be sold¹ until they are ripe, and a sale when unripe is wholly void². Sheaves or cocks of corn or corn loose or in the straw or hay³ must, unless replevied⁴, be sold within five days⁵ unless the time is extended⁶.

1 See the Distress for Rent Act 1737 s 8 (as amended), s 9; and PARAS 929, 1044 ante.

2 See PARA 1047 text and note 4 ante.

3 As to the power to distrain corn etc see PARA 929 ante.

4 As to replevin see PARA 1081 et seq post.

5 See *Piggott v Birtles* (1836) 1 M & W 441 at 448; and see also PARA 1044 ante.

6 Ie under the Law of Distress Amendment Act 1888 s 6: see PARA 1049 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(ii) Time, Place and Price/1051. Premature sale.

1051. Premature sale.

A premature sale involving no actual damage is in general an irregularity for which no damages can be recovered¹. A person protected by statute, however, has a right of action against a landlord who sells before the requisite five days², although he has not at the time served any declaration³. Although the landlord cannot sell until the expiration of the five days, he may remain upon the premises a reasonable time beyond the five days for the purpose of selling the goods distrained; the amount of the reasonable time is a question of fact in each individual case⁴. A continuance in possession or retention of the goods on the premises for an unreasonable time may constitute a trespass⁵.

1 See PARA 1047 note 3 ante. As to a premature sale of growing crops see PARA 1047 note 4 ante.

2 See PARAS 1044, 1049 ante.

3 *Sharpe v Fowle* (1884) 12 QBD 385; and see the Law of Distress Amendment Act 1908 s 1 (as amended); and PARAS 951, 956 ante.

4 *Pitt v Shew* (1821) 4 B & Ald 208; and see *Philpott v Lehain* (1876) 35 LT 855.

5 *Griffin v Scott* (1726) 2 Ld Raym 1424; *Winterbourne v Morgan* (1809) 11 East 395 (where Lord Ellenborough CJ at 400-401 had great doubt whether, on the construction of the Distress for Rent Act 1737 s 19 (see PARA 1078 post), the mere person of the distrainor remaining on the premises, without any disturbance of the plaintiff's possession would constitute the distrainor a trespasser). As to trespass see TORT vol 45(2) (Reissue) PARA 659 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(ii) Time, Place and Price/1052. Place of sale.

1052. Place of sale.

The sale of distress generally takes place where the goods and chattels are impounded¹, and if the goods are impounded on the premises chargeable with the rent they may be sold on those premises, and any person or persons whatsoever may enter on the premises for the purpose of taking part in the sale and of carrying off or removing goods on account of a purchaser². The tenant or owner of the goods or chattels distrained may by written request, however, require them to be removed to a public auction room or to some other fit and proper place specified in the request and to be sold there³, the person making the request bearing the costs and expenses attending the removal and any damage to the goods and chattels arising therefrom⁴. A request for removal does not estop the claimant from complaining of an original wrongful seizure of the goods⁵.

1 As to impounding see PARA 1013 et seq ante.

2 Distress for Rent Act 1737 s 10. As to a tenant's licence for any purchaser to enter his premises to fetch away goods sold see *Wood v Manley* (1839) 11 Ad & El 34.

3 The wording of this provision is probably not free from ambiguity, but it seems that it is intended that the tenant or owner should give to the distrainor the option of removing the goods either to any public auction room or to a place specified in the request.

4 Law of Distress Amendment Act 1888 s 5. As to the charging of a fee for removal see PARA 1058 note 1 post.

5 *Masters v Fraser* (1901) 85 LT 611.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(ii) Time, Place and Price/1053. Sale of sheaves of corn etc.

1053. Sale of sheaves of corn etc.

Sheaves or cocks of corn or corn loose or in the straw or hay must be locked up or detained and sold on the land where they are found¹, while growing crops must likewise be cut, gathered, and laid up in barns or other proper place on the premises, unless in default of there being such barns or proper place the landlord procures a barn or other place of storage in the neighbourhood, and when these are sold the sale must be at the place of storage².

1 See the Distress for Rent Act 1689 s 2 (as amended); and PARAS 929, 1014 ante.

2 Distress for Rent Act 1737 s 8 (as amended); and see PARAS 929, 1014 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(ii) Time, Place and Price/1054. Best price must be obtained.

1054. Best price must be obtained.

The goods must be sold at the best price that can be obtained for them¹. No condition may be imposed at the sale that may restrict the best price from being obtained, even though the tenant himself was bound by the condition in his own user of the goods², the landlord by the sale of distress waiving any covenant in the lease restraining such user³. In any claim for not selling at the best price, evidence may be given of mismanagement in connection with the handling of the goods at the sale⁴.

1 See the Distress for Rent Act 1689 s 1 (as amended); and PARA 1044 ante.

2 *Hawkins v Walrond* (1876) 1 CPD 280. This case finally decided the point which had previously been the subject of conflicting decisions.

3 *Hawkins v Walrond* (1876) 1 CPD 280 at 285 per Lindley J.

4 *Poynter v Buckley* (1833) 5 C & P 512.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(iii) Mode of Sale/1055. Mode of sale.

(iii) Mode of Sale

1055. Mode of sale.

Although the goods and chattels distrained are generally sold by auction, there is no statutory provision that an auction must be held¹. An auctioneer purporting to sell under a distress warrant does not give an implied warranty of title in so selling².

In order that the property may pass there must be an actual sale to a third person, and the landlord for this purpose cannot take the goods to himself or be the purchaser of them³. A landlord who himself purports to purchase does not obtain a valid title, and is liable to be sued for conversion⁴; even if the form of sale by auction is gone through, the goods do not vest in him so as to deprive a third party of their ownership⁵. Apparently, however, the tenant by agreement with the landlord may cede his own goods which have been seized in satisfaction or part satisfaction of the sum distrained for⁶. A true sale, however, although irregular, passes the property in the subject matter of the distress⁷. So long as the party selling acts bona fide there is no rule regulating the order in which the goods must be sold, and apparently all goods not privileged need not be exhausted before goods conditionally privileged are disposed of⁸.

1 There is no such provision either in the Distress for Rent Act 1689 s 1 (as amended) (see (see PARAS 1011, 1044 ante, 1056 post), or in the Law of Distress Amendment Act 1888.

2 *Payne v Elsdon* (1900) 17 TLR 161; and see AUCTION vol 2(3) (Reissue) PARA 252.

3 *King v England* (1864) 4 B & S 782; *Moore, Nettlefold & Co v Singer Manufacturing Co*[1903] 2 KB 168 (affd [1904] 1 KB 820, CA).

4 *Plasycoed Collieries Co Ltd v Partridge, Jones & Co Ltd*[1912] 2 KB 345. In this case, such a sale was held not to be a mere 'irregularity' within the Distress for Rent Act 1737 s 19 (see PARA 1078 post). As to conversion see TORT vol 45(2) (Reissue) PARA 548 et seq.

5 *Moore, Nettlefold & Co v Singer Manufacturing Co*[1904] 1 KB 820, CA.

6 *King v England* (1864) 4 B & S 782 at 786 per Blackburn J.

7 *King v England* (1864) 4 B & S 782 at 785-786 per Blackburn J, and at 786 per Mellor J; and see *Lyon v Weldon* (1824) 2 Bing 334 (confirming *Wallace v King* (1788) 1 Hy Bl 13).

8 *Jenner v Yolland* (1818) 6 Price 3 at 13. As to goods conditionally privileged see PARAS 948-949 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(iii) Mode of Sale/1056. Overplus.

1056. Overplus.

The overplus after the sale, namely the residue after the payment of the rent and of the reasonable charges of distress, appraisalment, and sale, if any, should, in strict law, be left in the hands of the sheriff, undersheriff, or constable for the owner's use¹; but in practice such overplus is generally paid over to the tenant direct². The court, however, may be required to find whether the tenant has or has not received the balance in satisfaction of the real overplus³.

1 Distress for Rent Act 1689 s 1. As to the office of sheriff see generally SHERIFFS.

2 *Stubbs v May* (1823) 1 LJOSCP 12; *Taylor v Harrison* (1832) 1 LJKB 155; *Lyon v Tomkies* (1836) 1 M & W 603 at 606, where Lord Abinger CB explained that any technical irregularity in the payment without special damage gave no cause of action in accordance with the Distress for Rent Act 1737 s 19 (see PARA 1078 post). As to the right to recover for irregular distress see PARA 1078 post.

3 *Lyon v Tomkies* (1836) 1 M & W 603. Charges are now regulated by the Distress for Rent Rules 1988, SI 1988/2050 (as amended): see PARA 1058 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(12) SALE OF DISTRESS/(iii) Mode of Sale/1057. Tenant's remedy for infringement of statutory provisions.

1057. Tenant's remedy for infringement of statutory provisions.

The tenant's remedy, if he suffers damage owing to the provisions of the Distress for Rent Act 1689¹ not being carried out, is by a claim under the statute, and not for money had and received²; nor has an undertenant whose goods have been distrained, a claim against the immediate tenant, who owed the rent, to recover the surplus paid over as money paid to his use³, though he is entitled to be reimbursed the value of the goods by the person from whom the rent was due⁴; nor is a landlord liable to inquire into or act on any notice of claim by a third party either to the surplus proceeds or to the surplus goods. In regard to the latter, although no provision is made by statute, it is proper for the landlord to return unsold goods, which have been removed, to the place from which they were taken⁵, or possibly to put them in some convenient place and give the tenant notice of that place⁶.

1 le the Distress for Rent Act 1689 s 1 (as amended): see PARAS 1011, 1044, 1056 ante.

2 *Yates v Eastwood* (1851) 6 Exch 805; and see PARA 1091 post.

3 *Moore v Pyrke* (1809) 11 East 52.

4 See PARA 950 ante.

5 *Evans v Wright* (1857) 2 H & N 527.

6 *Evans v Wright* (1857) 2 H & N 527 at 533 per Watson B.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(13) EXPENSES OF DISTRESS/1058. Regulation of expenses.

(13) EXPENSES OF DISTRESS

1058. Regulation of expenses.

The fees, charges and expenses in and incidental to distress for rent are regulated by the Distress for Rent Rules 1988¹. No person is entitled to charge, or recover from, a tenant any fees, charges or expenses for levying a distress, or for doing any act or thing in relation thereto, other than those specified in the relevant appendix annexed to the rules². In the case of any difference as to fees, charges and expenses between any of the parties, they are upon application to be assessed, by way of detailed assessment³, by the district judge of the county court of the district where the distress is levied, and he may make such order as he thinks fit as to the costs of the detailed assessment⁴.

The effect of the provisions set out above is that no charges may be made other than the prescribed charges for any act in the course of the distress or the carrying of the distress into effect or in relation to the levying of the distress and that any agreement to the contrary between the landlord and the tenant or the landlord and the bailiff is invalid⁵.

The possession charged for must be real or actual to enable the full charges⁶ to be made⁷. A reduced charge is payable for walking possession but only if a walking possession agreement in a prescribed form has been signed⁸.

The fee for levying distress is one which the distraining bailiff may retain out of the proceeds of the distress by way of remuneration⁹.

1 See the Distress for Rent Rules 1988, SI 1988/2050, App 1 paras 1-9 (as amended). Appendix 1 (as amended) lays down the fees etc for levying distress (App 1 para 1 (substituted by SI 2003/2141)), for attending to levy distress (Distress for Rent Rules 1988, SI 1988/2050, App 1 para 2 (amended by SI 2003/1858)), for taking possession (Distress for Rent Rules 1988, SI 1988/2050, App 1 para 3 (amended by SI 2003/1858)), for appraisalment (Distress for Rent Rules 1988, SI 1988/2050, App 1 para 4 (amended by SI 2003/1858)), for attending to remove (Distress for Rent Rules 1988, SI 1988/2050, App 1 para 5 (amended by SI 2003/1858)), and for sale (Distress for Rent Rules 1988, SI 1988/2050, App 1 para 6). Reasonable fees, charges and expenses may be taken where the distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress, subject to detailed assessment under r 11 (as amended) (see the text and note 4 infra): App 1 para 7 (amended by SI 2003/1858). Provision is made as to the calculation of percentage charges: see the Distress for Rent Rules 1988, SI 1988/2050, App 1 para 8. In addition to any amount authorised by these provisions in respect of the supply of goods or services on which value added tax is chargeable there may be added a sum equivalent to value added tax at the appropriate rate on that amount: App 1 para 9. As to the charge of value added tax on the supply of goods and services see generally VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 18 et seq.

In so far as the Distress for Rent Rules 1988, SI 1988/2050 (as amended) relate to fees, they are made under the power conferred by the Law of Distress Amendment Act 1888 s 8(2): see PARA 994 note 3 ante.

2 Distress for Rent Rules 1988, SI 1988/2050, r 10, App 1 (as amended: see note 1 supra).

3 ie under CPR Pt 47.

4 Distress for Rent Rules 1988, SI 1988/2050, r 11(1) (r 11 amended by SI 1999/2360; and by virtue of the Courts and Legal Services Act 1990 s 74). Where the court in which the detailed assessment is conducted is not the court in which the bailiff was granted his certificate (see PARA 995 ante) and the district judge is of opinion on the detailed assessment that there has been overcharging of such magnitude as to call into question the fitness of a bailiff to hold a certificate, the court officer must send to the court in which the bailiff was granted his certificate a copy of the completed bill indorsed with a note of the district judge's opinion: Distress for Rent Rules 1988, SI 1988/2050, r 11(2) (as so amended). The receipt of a bill under r 11(2) (as amended) is to be treated as a complaint under r 8(1) (as amended) (see PARA 997 ante): r 11(3).

5 *Day v Davies*[1938] 2 KB 74, [1938] 1 All ER 686, CA. The actual type of agreement in question in *Day v Davies* supra, namely an agreement for walking possession, is now, however, permitted in distress for rent subject to a limitation on charges: see the text and note 8 infra.

6 le under the Distress for Rent Rules 1988, SI 1988/2050, App 1 para 3(i) (amended by SI 2003/1858).

7 *Ex p Arnison*(1868) LR 3 Exch 56, where an attempt failed to charge full possession fees for the technical possession of growing crops.

8 Distress for Rent Rules 1988, SI 1988/2050, App 1 para 3(ii) (amended by SI 2003/1858). For the prescribed form see the Distress for Rent Rules 1988, SI 1988/2050, App 2 Form 8 (amended by SI 2003/1858). As to walking possession see PARA 1018 ante.

9 *Philipps v Rees*(1889) 24 QBD 17, CA. Although this decision was actually under the Agricultural Holdings (England) Act 1883 Sch 2 (repealed), the reasoning applies equally to fees under the Distress for Rent Rules 1988, SI 1988/2050 (as amended): see *Philipps v Rees* supra at 23 per Lopes LJ.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(14) SECOND DISTRESS/1059. No second distress for same rent.

(14) SECOND DISTRESS

1059. No second distress for same rent.

The remedy by distress must not be used in an oppressive manner, and the general rule is that a landlord may not split one entire demand and distrain twice for the same rent when he might have taken enough on the first occasion.

If he levies for too small a sum or seizes goods of inadequate value when he had a fair opportunity to seize more it is his own fault, and he cannot repair it by a second levy¹.

The rule is limited to a second distress made for the same rent. Separate rents may be reserved under one lease in respect of separate parcels and separately distrained for²; and where the rent in arrear consists of several instalments of rent falling due on different days, there may be a separate distress for each³. It is immaterial that the first distress is taken for the rent which last became due⁴. The same goods, after being replevied, may be distrained upon a second time for another instalment of rent⁵.

¹ *Dawson v Cropp* (1845) 1 CB 961; *Wallis v Savill* (1701) 2 Lut 1532 at 1536; *Hutchins v Chambers* (1758) 1 Burr 579 at 589; *Owens v Wynne* (1855) 4 E & B 579; *Bagge v Mawby* (1853) 8 Exch 641; *Grunnell v Welch* [1905] 2 KB 650 at 653 per Kennedy J (on appeal [1906] 2 KB 555, CA).

² *Shep Touch* 81. See PARAS 979, 983 ante.

³ *Gambrell v Earl of Falmouth* (1835) 4 Ad & El 73.

⁴ *Palmer v Stanage* (1661) 1 Lev 43.

⁵ *Hefford v Alger* (1808) 1 Taunt 218; and see *Wilton v Wiffen* (1830) 8 LJOSKB 303. As to replevin see PARA 1081 et seq post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(14) SECOND DISTRESS/1060. Exceptions.

1060. Exceptions.

In the following cases the general rule against a second distress¹ does not apply and a second distress may be taken:

- 17 (1) if there are not sufficient goods on the premises on the first occasion²;
- 18 (2) if the person seizing the goods on the first occasion has reasonably mistaken their value, for example where the goods were pictures, jewels or racehorses or other objects of uncertain value³ or, owing to circumstances not anticipated at the time of the distress, the goods failed to realise their market value⁴;
- 19 (3) if the conduct of the tenant has prevented the landlord realising the fruits of the distress⁵;
- 20 (4) if cattle die in the pound by the act of God⁶.

1 See PARA 1059 ante.

2 *Wallis v Savill* (1701) 2 Lut 1532.

3 *Hutchins v Chambers* (1758) 1 Burr 579 at 589.

4 *Rawlence and Squarey v Spicer* [1935] 1 KB 412, CA (distress for tithe rentcharge; only two tenders on sale owing to anti-tithe agitation, the higher being by the person on whom the distress had been levied).

5 *Bagge v Mawby* (1853) 8 Exch 641; *Lee v Cooke* (1858) 3 H & N 203, Ex Ch. So also if a combination of the person on whom the distress was levied and other persons prevents the sale from being effective: *R v Judge Clements, ex p Ferridge* [1932] 2 KB 535; *Rawlence and Squarey v Spicer* [1935] 1 KB 412, CA (cases of distress for title rentcharge).

6 *Anon* (1568) 3 Dyer 280a pl 14; *Anon* (1700) 12 Mod Rep 397.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(14) SECOND DISTRESS/1061. Voluntary abandonment.

1061. Voluntary abandonment.

The rule against a second distress¹ applies where the landlord having distrained enough voluntarily abandons the distress, that is to say where he surrenders or forbears to exercise his power of making the distress fruitful². Abandonment is a question of fact³. Merely quitting possession of goods after the distress is not necessarily an abandonment⁴; nor is failure to resume immediate possession upon being forcibly expelled⁵; nor is allowing the goods of a stranger which have been distrained to be removed for a temporary purpose⁶. Further, a distrainer does not abandon if he enters into a walking possession agreement with a tenant⁷ or with a responsible person in the tenant's house⁸.

An exception to the application of the rule in the case of voluntary abandonment is where the landlord is induced in good faith to withdraw the distress at the request of or by the procurement of the tenant⁹; but the procurement must have been that of the tenant, and not of a stranger¹⁰.

1 See PARA 1059 ante.

2 *Bagge v Mawby* (1853) 8 Exch 641; *Dawson v Cropp* (1845) 1 CB 961; *Smith v Goodwin* (1833) 4 B & Ad 413.

3 *Eldridge v Stacey* (1863) 15 CBNS 458; *Lumsden v Burnett* [1898] 2 QB 177, CA.

4 *Bannister v Hyde* (1860) 2 E & E 627; *Jones v Biernstein* [1899] 1 QB 470 (affd [1900] 1 QB 100, CA).

5 *Eldridge v Stacey* (1863) 15 CBNS 458.

6 *Kerby v Harding* (1851) 6 Exch 234.

7 *Lumsden v Burnett* [1898] 2 QB 177, CA; *Lloyds and Scottish Finance Ltd v Modern Cars and Caravans (Kingston) Ltd* [1966] 1 QB 764, [1964] 2 All ER 732 (a case of execution). See also *Abingdon RDC v O' Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA.

8 As to walking possession see PARA 1018 ante.

9 *Bagge v Mawby* (1853) 8 Exch 641 at 649-650 per Parke B; *Crosse v Welch* (1892) 8 TLR 709 at 710, CA; and see also *Wollaston v Stafford* (1854) 15 CB 278 (false representation); *Thwaites v Wilding* (1883) 12 QBD 4, CA (arrangement not carried out).

10 Where a landlord withdrew his distress in consequence of a creditor stating that he was proceeding against a tenant in bankruptcy and warning the landlord not to sell, a second distress was illegal, as he should have disregarded the warning: *Bagge v Mawby* (1853) 8 Exch 641.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(14) SECOND DISTRESS/1062. When first distress unlawful.

1062. When first distress unlawful.

For the rule against a second distress¹ to apply, the proceedings in the first distress must have been such that if they had been carried out they would have resulted in the landlord getting what he got in the second proceedings; and where a purported first distress was a mere trespass and void ab initio as a distress, so that the landlord could not satisfy his claim for rent by means of that proceeding, he may lawfully distrain again for the same rent².

¹ See PARA 1059 ante.

² *Grunnell v Welch* [1906] 2 KB 555, CA (where the first distress was a trespass, and upon the authority of *Attack v Bramwell* (1863) 3 B & S 520, was void ab initio).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(15) FRAUDULENT REMOVAL/1063. Landlord's powers on fraudulent removal by tenant.

(15) FRAUDULENT REMOVAL

1063. Landlord's powers on fraudulent removal by tenant.

When the tenant fraudulently or clandestinely removes his goods or chattels from the demised premises to prevent the landlord from distraining them, the landlord, or any person empowered by him, may within 30 days after such removal seize the goods and chattels from wherever they are to be found¹ and sell them as if they had actually been distrained upon the demised premises²; provided that the goods and chattels have not been sold in good faith and for a valuable consideration before such seizure to any person not privy to the fraud³.

1 See *Southam v Smout*[1964] 1 QB 308 at 326, [1963] 3 All ER 104 at 109, CA, per Lord Denning. This case concerned the arrest of a debtor at a stranger's house but the authorities as to right of entry by bailiffs were reviewed. As to right of entry on the premises of a third party for the purposes of execution see generally CIVIL PROCEDURE.

2 Distress for Rent Act 1737 s 1 (amended by the Statute Law Revision Act 1948). At common law there was nothing to prevent a tenant from clandestinely and fraudulently removing his goods to avoid their being distrained.

3 Distress for Rent Act 1737 s 2. See also PARA 980 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(15) FRAUDULENT REMOVAL/1064. When powers exist.

1064. When powers exist.

The statutory provision relating to the landlord's powers on the fraudulent removal of goods by the tenant¹ only applies in the following cases.

- 21 (1) The removal must be shown to be fraudulent or clandestine. A removal may be fraudulent even if not made clandestinely and even if it is made openly with the landlord's knowledge². It is not fraudulent if made in the honest belief that the landlord had no legal right to distrain³; but the mere fact of removing goods without leaving sufficient to satisfy the rent may be some evidence of fraud⁴. The burden of proving that the removal is fraudulent or clandestine is on the landlord⁵.
- 22 (2) The removal must have been to avoid a distress⁶. The tenant's participation in the removal need not be shown and it is sufficient if done with his privity⁷.
- 23 (3) The landlord must show that no sufficient distress remains on the premises after the removal⁸.
- 24 (4) The removal must have taken place after the rent has fallen due (though not necessarily in arrear), that is on or after the day fixed for payment⁹, though it is not necessary to show that the landlord contemplated a distress at the time of removal¹⁰.
- 25 (5) The goods must have been those of the tenant and not of a stranger or lodger¹¹.
- 26 (6) The goods must have been distrainable by the landlord either at common law or under the Landlord and Tenant Act 1709¹², if they had remained on the premises¹³; so that if the landlord had parted with his reversion¹⁴, or if the tenancy had determined and the tenant had given up possession¹⁵, or if there was no demise at an ascertained rent¹⁶, the landlord could not follow them, nor can he follow and distrain the goods until after the rent is actually in arrear¹⁷.
- 27 (7) The removal must have been on behalf of the tenant; if a mortgagee, creditor or other person having a charge on the goods removes the goods in assertion of his title to them, with the privity and sanction of the tenant, the statute¹⁸ does not apply¹⁹.
- 28 (8) Where the removed goods are claimed by a purchaser in good faith he must prove his title to them²⁰.

1 See PARA 1063 ante.

2 *Opperman v Smith* (1824) 4 Dow & Ry KB 33.

3 *John v Jenkins* (1832) 1 Cr & M 227.

4 *Opperman v Smith* (1824) 4 Dow & Ry KB 33.

5 *Inkop v Morchurch* (1861) 2 F & F 501.

6 *Parry v Duncan* (1831) 7 Bing 243.

7 *Lister v Brown* (1823) 3 Dow & Ry KB 501.

8 *Parry v Duncan* (1831) 7 Bing 243. This has, however, been questioned: see *Gillam v Arkwright* (1850) 16 LTOS 88; *Gegg v Perrin* (1845) 9 JP 619.

9 *Rand v Vaughan* (1835) 1 Bing NC 767; *Dibble v Bowater* (1853) 2 E & B 564; *Watson v Main* (1799) 3 Esp 15. In *Dibble v Bowater* supra, the tenant removed the goods on the morning of the day on which rent was due, and the landlord, after the rent had become in arrear and within 30 days of the removal, followed and seized the goods as a distress; the seizure was held justified, the rent being due and payable, though not in arrear at the time of the removal. This case was considered in *Re Aspinall, Aspinall v Aspinall* [1961] Ch 526, [1961] 2 All ER 751, where the lessor died on the morning of the day on which rents were due and the question arose whether the rents were capital or income of his estate.

10 *Stanley v Wharton* (1822) 10 Price 138.

11 *Thornton v Adams* (1816) 5 M & S 38; *Fletcher v Marillier* (1839) 9 Ad & El 457; *Postman v Harrell* (1833) 6 C & P 225; *Foulger v Taylor* (1860) 5 H & N 202.

12 See the Landlord and Tenant Act 1709 s 6 (as amended), s 7; and PARA 965 ante.

13 *Gray v Stait* (1883) 11 QBD 668, CA.

14 *Ashmore v Hardy* (1836) 7 C & P 501; *Angell v Harrison* (1847) 17 LJQB 25.

15 *Gray v Stait* (1883) 11 QBD 668, CA.

16 *Anderson v Midland Rly Co* (1861) 3 E & E 614.

17 *Stanley v Wharton* (1822) 10 Price 138; *Norman v Wescombe* (1837) 2 M & W 349.

18 Re the Distress for Rent Act 1737: see PARAS 1063 ante, 1065 post.

19 *Bach v Meats* (1816) 5 M & S 200; *Tomlinson v Consolidated Credit and Mortgage Corp'n* (1889) 24 QBD 135, CA.

20 *Williams v Roberts* (1852) 7 Exch 618.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(15) FRAUDULENT REMOVAL/1065. Penalty.

1065. Penalty.

To deter the tenant from making a fraudulent removal, as well as others from aiding him, it is provided that if a tenant fraudulently removes and conveys away¹ his goods or chattels to prevent the landlord from distraining them, or if any person wilfully and knowingly aids or assists² him in such fraudulent conveying away or carrying off of any part of his goods or chattels or in concealing the same, every person so offending must forfeit to the landlord double the value of the goods or chattels carried off or concealed by him as aforesaid; the penalty to be recovered by action³.

It is not necessary to show that a distress was in progress or even contemplated⁴, or to prove the amount of rent as alleged in the claim⁵. In a claim against a third person the acts and orders of the tenant are admissible evidence of the fraud of the defendant if by other evidence he is proved to have contributed to the proceeding, and circumstances of suspicion may be adduced to prove a fraudulent co-operation between them⁶. A claim under the statute is a penal one, so that the claimant is not entitled to obtain disclosure by delivering requests for information to the defendant⁷, and must prove his case strictly⁸.

1 The tenant's actual participation in the removal is not necessary if such removal is effected by a third person with his privity: *Lister v Brown* (1823) 3 Dow & Ry KB 501.

2 In the case of a third person he must be shown to have actually assisted the tenant and to have been privy to his fraudulent intent: *Brooke v Noakes* (1828) 8 B & C 537. The removal must have been on behalf of the tenant: see PARAS 1064 text and notes 18-19 ante.

3 See the Distress for Rent Act 1737 s 3 (amended by the Statute Law Revision Act 1948). For an alternative remedy when the goods do not exceed £50 see PARA 1066 post. The relevant court is now the High Court by virtue of the Supreme Court Act 1981 (prospectively renamed the Senior Courts Act 1981) s 1(1) (prospectively amended), ss 19(1), (2), 151(5), Sch 4 para 1: see COURTS.

4 *Stanley v Wharton* (1822) 10 Price 138.

5 *Gwinnet v Phillips* (1790) 3 Term Rep 643.

6 *Stanley v Wharton* (1822) 10 Price 138.

7 *Hobbs & Co v Hudson* (1890) 25 QBD 232, CA.

8 *Brooke v Noakes* (1828) 8 B & C 537.

UPDATE

1065 Penalty

NOTE 3--Supreme Court Act 1981 cited as Senior Courts Act 1981 as from 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(15) FRAUDULENT REMOVAL/1066. Criminal proceedings where value does not exceed £50.

1066. Criminal proceedings where value does not exceed £50.

To deter the tenant from making a fraudulent removal, as well as others from aiding him, there is a remedy where the goods fraudulently carried off or concealed do not exceed the value of £50¹. In that case the landlord or his agent may exhibit an information² against the offender before two or more justices of the peace, not being interested in the lands whence the goods were removed, who may determine in a summary way whether the parties are guilty, inquire as to the value of the goods fraudulently removed, and order the offender to forfeit double their value³. Even when the goods are under the value of £50 the landlord may elect to proceed by claim instead of before the magistrates⁴.

1 As to an alternative remedy under the Distress for Rent Act 1737 s 3 (as amended) see PARA 1065 ante.

2 See the Magistrates' Courts Act 1980 s 50.

3 Distress for Rent Act 1737 s 4 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law Repeals Act 1888; the Statute Law Revision Act 1948; the Justices of the Peace Act 1949 s 46(2), Sch 7; the Access to Justice Act 1999 s 76(2), Sch 10 para 2; and the Courts Act 2003 s 109(1), (3), Sch 8 para 2, Sch 10). For the enforcement of payment see PARA 1134 post; and MAGISTRATES. See also *Coster v Wilson* (1838) 3 M & W 411.

4 *Stanley v Wharton* (1822) 10 Price 138; *Bromley v Holden* (1828) Mood & M 175; and see *Horsefall v Davy* (1816) 1 Stark 169.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(15) FRAUDULENT REMOVAL/1067. Appeal.

1067. Appeal.

Any person aggrieved by the order of the justices may appeal to the Crown Court¹. If the appellant enters into a recognisance with one or two sufficient surety or sureties in double the sum ordered to be paid, with condition to appear at the Crown Court, the order will not be executed against him in the meantime².

1 Distress for Rent Act 1737 s 5 (s 5 amended by the Summary Jurisdiction Act 1884 s 4, Schedule; and the Distress for Rent Act 1737 ss 5, 6 amended by the Courts Act 1971 s 56(1), Sch 8 para 2). See also *R v Cheshire Justices* (1833) 5 B & Ad 439. The notice of appeal must be given within 21 days after the decision: see the Crown Court Rules 1982, SI 1982/1109, r 7(3); and COURTS.

2 Distress for Rent Act 1737 s 6 (as amended: see note 1 *supra*).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(15) FRAUDULENT REMOVAL/1068. Forcible entry to remove goods.

1068. Forcible entry to remove goods.

Where any goods fraudulently or clandestinely removed by the tenant or his servant or agent or other person aiding or assisting are put in any house, barn, stable, outhouse, yard, close, or place locked up or otherwise secured, so as to prevent the goods from being seized as a distress for arrears of rent, the landlord or his steward, bailiff, receiver or other person empowered may (after first summoning a constable, who is required to assist, and, in the case of a dwelling house, after making oath before a justice of the peace of a reasonable ground to suspect that the goods are therein) in the daytime break open and enter the premises and seize the goods as a distress¹.

A previous request is unnecessary in order to give the landlord the right to break into the premises for the purpose of seizing the goods².

There must be a constable present at the breaking in³, but he may be a special constable appointed by a warrant for the particular occasion⁴.

1 Distress for Rent Act 1737 s 7 (amended by the Statute Law Revision Act 1888).

2 *Williams v Roberts* (1852) 7 Exch 618.

3 *Rich v Woolley* (1831) 7 Bing 651.

4 *Cartwright v Smith and Batty* (1833) 1 Mood & R 284.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(16) RESCUE AND POUND-BREACH/(i) Nature of Offences/1069. Rescue and pound-breach.

(16) RESCUE AND POUND-BREACH

(i) Nature of Offences

1069. Rescue and pound-breach.

In as much as a distress does not until sale divest the tenant of the property in the chattels, or, in point of law, vest the possession of such chattels in the landlord, the latter, where the goods are removed or otherwise interfered with, cannot maintain a claim against the tenant or a stranger for conversion¹ (or, apparently, detainee²). His remedy is in respect of the rescue or pound-breach, as the case may be. Both are offences at common law, for which a claim for rescue or pound-breach will lie³, and for which an additional and more satisfactory remedy has been provided by statute⁴.

1 *R v Cotton* (1751) 2 Ves Sen 288 at 294 per Parker CB (distrainor cannot maintain conversion or trespass); *Moneux v Goreham* (1741) 2 Selwyn's NP (11th Edn) 1335; *Wilbraham v Snow* (1670) 2 Wms Saund 47; and see *Turner v Ford* (1846) 15 M & W 212. As to conversion see TORT vol 45(2) (Reissue) PARA 548 et seq.

2 Detinue was not maintainable without a right of possession and a right of property: see *Jarvis v Williams*[1955] 1 All ER 108 at 111, [1955] 1 WLR 71 at 75, CA, per Sir Raymond Evershed MR. As to the abolition of detainee see TORT vol 45(2) (Reissue) PARA 544.

3 3 Bl Com (14th Edn) 146. As to rescue see PARA 1070 post; and as to pound-breach see PARA 1071 post.

4 See the Distress for Rent Act 1689 s 3 (as amended); and PARA 1073 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(16) RESCUE AND POUND-BREACH/(i) Nature of Offences/1070. Rescue.

1070. Rescue.

Goods distrained are regarded from the seizure as being taken by a process of law, and not merely by an assertion of a private right of the distrainor, and the taking of them out of the custody of the distrainor before they are impounded is regarded in the light of a resistance of lawful authority, and is termed a rescue or rescous¹. To prevent a distress being made is not a rescue, but to prevent it being impounded is². There may be a rescue without any act of the owner in bringing about the escape of cattle, if he resists their recapture; for example, when a distress has been taken and the cattle distrained, as they are being driven to the pound, go into the house of the owner who refuses to deliver them to the distrainor when he demands them, there is a rescue in law³. There can be no rescue until the thing is actually distrained, and in any case in which the distrainor abandons or quits possession of the chattels, the retaking by the owner is not a rescue⁴.

1 Com Dig Distress (D3). Rescous is a taking away and setting at liberty against law a distress taken or a person arrested by the process or course of law: Co Litt 160b.

2 *Iredale v Kendall* (1878) 40 LT 362 (sale by auctioneer after seizure).

3 Co Litt 161a.

4 *Dod v Monger* (1704) 6 Mod Rep 215 at 216; *Knowles v Blake* (1829) 5 Bing 499.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(16) RESCUE AND POUND-BREACH/(i) Nature of Offences/1071. Pound-breach.

1071. Pound-breach.

Pound-breach is the retaking from the custody of the law of a chattel which has been impounded¹. A person cannot be guilty of pound-breach unless he knows that the goods have been impounded or otherwise secured². Where the goods have been impounded on the premises³ and left in their existing position under a walking possession agreement⁴ between the tenant and the distrainer, the tenant will be guilty of pound-breach if he removes the goods, but not so a stranger if he removes the goods in ignorance of the impounding⁵. Furniture removers who, in the ordinary course of their business, remove goods which have already been brought outside the premises where they were impounded are not guilty of pound-breach⁶. A person who removes impounded goods may be guilty of pound-breach even though the tenant has been given permission to use the goods temporarily⁷. Where goods are impounded or otherwise secured, and either the tenant or a stranger knowing of the impounding does that which, if the goods were the property of or in the possession of the landlord, would as against him amount to conversion, then, it seems, the offender is guilty of pound-breach⁸. The sheriff may be liable if execution is levied on goods in the possession of a bailiff under a distress⁹.

1 As to impounding see PARA 1013 et seq ante. As to pound-breach in respect of cattle and other animals see ANIMALS VOL 2 (2008) PARA 761.

2 *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA.

3 For the general principle that goods may be impounded either on or off the premises see PARA 1013 ante. As to impounding on the premises see PARA 1016 ante.

4 As to walking possession agreements see PARA 1018 ante.

5 *Abingdon RDC v O'Gorman* [1968] 2 QB 811, [1968] 3 All ER 79, CA (disapproving dicta as to the effectiveness of walking possession against third parties which were expressed in *Lavell & Co Ltd v O'Leary* [1933] 2 KB 200, CA). As to the necessity for an impounding on the premises to be manifest if it is to be effective against a stranger see PARA 1016 ante.

Where goods are impounded off the premises, the impounding will ordinarily be plain and obvious to anyone so that a stranger who removes them will be guilty of pound-breach: see PARA 1015 ante.

6 *Lavell & Co Ltd v O'Leary* [1933] 2 KB 200, CA.

7 *Bevir v British Wagon Co Ltd* (1935) 80 L Jo 162.

8 Thus granting a replevin without authority may constitute pound-breach: *Trevannian's Case* (1704) 11 Mod Rep 32. As to replevin see PARA 1081 et seq post.

9 *Reddell v Stowey* (1841) 2 Mood & R 358; *Turner v Ford* (1846) 15 M & W 212; but see *Story v Finniss* (1851) 6 Exch 123 (where the sheriff's officer merely prevented the removal of the goods from the premises).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(16) RESCUE AND POUND-BREACH/(i) Nature of Offences/1072. Justifying rescue etc.

1072. Justifying rescue etc.

Rescue¹ may be justified in certain cases where the distress is unlawful². Pound-breach³ is an offence against the dignity of the law, and can never be justified⁴. If the distrainer himself takes the distress out of the pound for the unlawful purpose of using it, the owner may retake possession of it from him without being guilty of either rescue or pound-breach⁵.

1 As to rescue see PARA 1070 ante.

2 See PARA 1102 post.

3 As to pound-breach see PARA 1071 ante.

4 *Cotsworth v Betison* (1696) 1 Ld Raym 104; *Parrett Navigation Co v Stower* (1840) 6 M & W 564; *Firth v Purvis* (1793) 5 Term Rep 432; Co Litt 47a.

5 *Smith v Wright* (1861) 6 H & N 821.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(16) RESCUE AND POUND-BREACH/(ii) The Remedies/1073. Remedies for rescue and pound-breach.

(ii) The Remedies

1073. Remedies for rescue and pound-breach.

The remedies in the case of both rescue¹ and pound-breach² are either by recaption or action, and in the case of pound-breach also by indictment.

The right of recaption, that is to pursue and retake the goods wherever the landlord may happen to find them, obtains in each case³, but in exercising the right the landlord must not commit a breach of the peace; and in the case of a rescue the recaption must be 'upon a fresh pursuit', that is without delay⁴, and there is authority for saying that the same limitation applies in the case of pound-breach⁵.

The landlord has a common law right of action in the case of rescue and pound-breach⁶. The claim commonly brought is, however, under the Distress for Rent Act 1689⁷, to recover treble damages against the offender, or, where they have come into his possession, against the owner of the goods distrained⁸. The claim is maintainable by the landlord without proof of any actual damage⁹, and it is not necessary that notice of the distress has been given⁸. Tender of the rent and costs after the goods have been impounded is no defence¹⁰. The claim is a penal one, and the claimant is not entitled to disclosure of documents¹¹. The claim lies at the instance of the landlord and not the bailiff¹².

1 As to rescue see PARA 1070 ante.

2 As to pound-breach see PARA 1071 ante.

3 *Rich v Woolley* (1831) 7 Bing 651.

4 *Rich v Woolley* (1831) 7 Bing 651 at 661.

5 See *Turner v Ford* (1846) 15 M & W 212.

6 See PARA 1069 ante.

7 See the Distress for Rent Act 1689 s 3 (amended by the Statute Law Revision Act 1888; and the Administration of Justice Act 1965 s 34(1), Sch 2).

8 See *Berry v Huckstable* (1850) 14 Jur 718.

9 *Kemp v Christmas* (1898) 79 LT 233, CA.

10 *Belasyse v Burbridge* (1696) 1 Lut 213.

11 *Firth v Purvis* (1793) 5 Term Rep 432.

12 *Jones v Jones* (1889) 22 QBD 425.

13 *Always v Broome* (1695) 2 Lut 1259. In that case, it was held that if the bailiff sustained injury the landlord can recover in respect of that injury but it is doubtful if that decision is still good law.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(16) RESCUE AND POUND-BREACH/(ii) The Remedies/1074. Goods on premises of third person.

1074. Goods on premises of third person.

The landlord has the same remedy for rescue and pound-breach whether the chattels are to be or are impounded on or off the premises¹. It is, however, doubtful whether a claim can be maintained under the Distress for Rent Act 1737² in the case of goods fraudulently removed by the tenant and followed and distrained on the premises of a third person and afterwards rescued by such third person³. The fact that the goods are found in the possession of a person who has previously claimed to be owner of them is not sufficient to render him liable without proof that the pound was broken by him⁴.

1 Distress for Rent Act 1737 s 10; *Firth v Purvis* (1793) 5 Term Rep 432. As to impounding see PARA 1013 et seq ante. As to rescue see PARA 1070 ante; and as to pound-breach see PARA 1071 ante.

2 Ie the Distress for Rent Act 1689 s 3 (as amended): see PARA 1073 ante.

3 *Harris v Thirkell* (1852) 20 LTOS 98.

4 *Castleman v Hicks* (1842) Car & M 266.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(16) RESCUE AND POUND-BREACH/(ii) The Remedies/1075. Indictment.

1075. Indictment.

Pound-breach is an indictable offence at common law¹. The indictment lies where goods have been taken out of the custody of the law².

1 Co Litt 47b; 2 Hawk PC c 10, s 56; *R v Butterfield* (1893) 17 Cox CC 598; *R v Nicholson and King* (1901) 65 JP 298 (a case of rescue). The punishments are fine and imprisonment: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 746. As to pound-breach see PARA 1071 ante.

2 *R v Bradshaw* (1835) 7 C & P 233. It is doubtful whether an indictment lies in such a case, if a person retakes his own goods which have been unlawfully seized: *R v Walshe* (1876) IR 10 CL 511; *R v Knight* (1908) 73 JP 15, CCA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(i) Illegal Distress/1076. Circumstances in which distress is illegal.

(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES

(i) Illegal Distress

1076. Circumstances in which distress is illegal.

An illegal distress is one which is wrongful at the very outset, that is to say either where there was no right to distrain or where a wrongful act was committed at the beginning of the levy invalidating all subsequent proceedings. In such a case the distrainor is a trespasser *ab initio*, and it is no defence that the goods have been applied in discharge of the rent¹. As the distrainor has in himself no right to seize the particular chattels, he can confer no title to them upon a person to whom, under colour of the distress, they may purport to have been sold.

The following are instances of illegal distress: a distress by a landlord after he has parted with his reversion²; a distress by a person in whom the reversion is not vested³; a distress when no rent is in arrear⁴; or for a claim or debt which is not rent, as a payment for the hire of chattels⁵; a distress made after a valid tender of rent has been made⁶; a second distress for the same rent⁷; a distress off the premises or on the highway⁸; a distress in the night, that is between sunset and sunrise⁹; a distress made in an unlawful manner, as by breaking open an outer door or opening a closed window¹⁰; distraining things privileged from distress¹¹; distraining goods contrary to an agreement with the tenant¹² or with a stranger¹³; a distress levied or proceeded with contrary to the Law of Distress Amendment Act 1908¹⁴; selling goods not distrained, or not included in the inventory¹⁵.

Where the act done is wrongful, but is wrongful merely as to part of the goods, no wrong being done as to the residue, the wrongdoer is a trespasser as to that part of the goods only in respect of which the wrongful act is done¹⁶.

The remedies for an illegal distress are rescue, replevin, or damages¹⁷.

1 *Attack v Bramwell* (1863) 3 B & S 520.

2 See PARAS 968-969, 972 ante.

3 See PARA 912 ante.

4 Co Litt 160b; and see PARA 911 ante. As to claims for double value see PARA 1098 post.

5 See PARA 909 ante.

6 Co Litt 160b; *Bennett v Bayes* (1860) 5 H & N 391; and see PARA 975 ante.

7 See PARAS 1059-1062 ante.

8 See PARA 979 ante. When a distress is illegal because it is taken in the highway, the proper remedy is rescue (see PARA 1102 post); and if the injured party seeks relief by action he should rely on 52 Hen 3 (Statute of Marlborough) (1267) c 15 (see PARA 979 note 1 ante).

9 Co Litt 142a; and see PARA 963 ante.

10 *Attack v Bramwell* (1863) 3 B & S 520; and see PARAS 1005-1006 ante.

- 11 *Keen v Priest* (1859) 4 H & N 236; *Swire v Leach* (1865) 18 CBNS 479; and see PARA 930 et seq ante.
- 12 *Giles v Spencer* (1857) 3 CBNS 244; and see *Sier v Bullen* (1915) 84 LJKB 1288.
- 13 *Horsford v Webster* (1835) 1 Cr M & R 696; and see PARA 978 ante.
- 14 See the Law of Distress Amendment Act 1908 s 2 (as amended); *Interoven Stove Co Ltd v Hibbard and Painter and Shepherd*[1936] 1 All ER 263; and PARA 959 ante.
- 15 See PARA 1012 ante. If things are removed or sold which were not seized under the distress in the first instance, nor included in the inventory, the distrainor is as to such things an absolute trespasser: *Sims v Tuffs* (1834) 6 C & P 207; *Bishop v Bryant* (1834) 6 C & P 484.
- 16 *Harvey v Pocock* (1843) 11 M & W 740.
- 17 As to rescue see PARA 1102 post; as to replevin see PARA 1081 et seq post; and as to claims for damages see PARA 1090 et seq post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(ii) Irregular Distress/1077. Circumstances in which distress is irregular.

(ii) Irregular Distress

1077. Circumstances in which distress is irregular.

A distress is irregular when, although the levy was legal and in order, the subsequent proceedings have been conducted in an unlawful manner. The following are instances of irregular distress: selling without having served notice of the distress with copy of inventory on the tenant¹; selling within the five or 15 days allowed to replevin²; selling growing crops before they are gathered³; selling without appraisement when it is still requisite⁴; selling for otherwise than the best price⁵; improper dealing with any overplus⁶; detaining⁷ or removing⁸ the chattels distrained when a tender of rent and costs is made after distress and before impounding; selling the distress when a tender of rent and costs is made after impounding but within the time allowed for replevin⁹.

1 See PARAS 1011-1012 ante.

2 See PARA 1049 ante. As to replevin see PARA 1081 et seq post.

3 *Proudlove v Twemlow* (1833) 1 Cr & M 326; *Rodgers v Parker* (1856) 18 CB 112. See also PARA 1050 ante.

4 As to appraisement see PARA 1019 ante.

5 *Poynter v Buckley* (1833) 5 C & P 512; *Walter v Rumbal* (1695) 1 Ld Raym 53; *Clarke v Holford* (1848) 2 Car & Kir 540; *Rapley v Taylor and Smith* (1883) Cab & El 150. As to the requirement to sell for the best price see PARA 1054 ante.

6 As to overplus see PARAS 1056-1057 ante.

7 *Loring v Warburton* (1858) EB & E 507.

8 *Vertue v Beasley* (1831) 1 Mood & R 21; and see PARA 975 ante.

9 *Johnson v Upham* (1859) 2 E & E 250. As to impounding see PARA 1013 et seq ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(ii) Irregular Distress/1078. Distrainor not a trespasser.

1078. Distrainor not a trespasser.

For a distress that is only irregular, and not illegal at the outset¹, the distrainor is not treated as a trespasser ab initio, and the tenant can only recover the actual damage he has suffered².

¹ Where the distress is illegal at the outset, eg where the landlord gains entry to the premises by breaking in, the Distress for Rent Act 1737 s 19 does not apply: see *Attack v Bramwell* (1863) 3 B & S 520; and PARAS 1006 note 5, 1076 note 10 ante.

² Distress for Rent Act 1737 s 19; *Rodgers v Parker* (1856) 18 CB 112; and see PARA 1095 post.

At common law there was no distinction between an illegal and an irregular distress, and any irregularity in the conduct of the distress rendered the entire proceedings void and the party distraining a trespasser ab initio: *Six Carpenters' Case* (1610) 8 Co Rep 146a, 1 Smith LC (13th Edn) 134. This was found to occasion hardships to landlords and was remedied by the Distress for Rent Act 1737.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(ii) Irregular Distress/1079. Purchaser's title to goods.

1079. Purchaser's title to goods.

A person who purchases goods under a distress which is merely irregular acquires a good title to the goods, for in such a case conversion would not lie against the landlord, and the remedy of the tenant is in damages as against his landlord¹.

A sale to the landlord himself is not a mere irregularity; he does not obtain a valid title and may be sued for conversion².

1 *Wallace v King* (1788) 1 Hy Bl 13; *Whitworth v Smith* (1832) 1 Mood & R 193; cf the effect of sale under an illegal distress; and see PARAS 1076, 1078 ante.

2 *Plasycoed Collieries Co Ltd v Partridge, Jones & Co Ltd* [1912] 2 KB 345; and see PARA 1055 ante. As to conversion see TORT vol 45(2) (Reissue) PARA 548 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iii) Excessive Distress/1080. What is excessive distress.

(iii) Excessive Distress

1080. What is excessive distress.

The distrainor must be careful not to seize more goods than are reasonably sufficient to satisfy the rent in arrear and the costs of the distress¹. An excessive distress is wrongful both at common law² and by statute³.

To be proved excessive the value of the goods seized must be clearly disproportionate to the rent and costs, taking into consideration the conditions under which a forced sale of the effects must take place⁴. To avoid an excess all that is required is that the distrainor should exercise a reasonable and honest discretion in estimating what the goods will realise at a broker's sale by auction without considering what value the tenant himself could have obtained for them or what an incoming tenant in the same line of business would pay for them. The landlord is authorised to protect himself by seizing what any reasonable man would think adequate to the satisfaction of the claim⁵. Where the goods have been appraised before sale, that is not conclusive against the tenant as to their real value⁶, for the best means may not have been taken to ascertain their value⁷; and though the price realised at an auction is *prima facie* evidence of value as regards excess⁸, it is not conclusive⁹. The question of excess is one of fact, and a claim will lie for an excessive distress although the sale, less the expenses, did not equal the arrears of rent¹⁰. The mere fact that the chattels were sold at an undervalue does not necessarily show that the distress was an excessive one¹¹. A claim will lie for an excessive distress of growing crops when the probable produce is capable of being estimated at the time of seizure¹².

The distrainor is not bound to calculate precisely the value of the property seized. He must take care that a reasonable proportion is kept between the value of the property and the sum for which he is entitled to take it¹³.

Taking a single chattel, though of considerably greater value than the rent, is not excessive if there is no other distress on the land which can be taken, or even if there are other articles, but of an aggregate value less than sufficient to satisfy the distress¹⁴. If the distrainor had the opportunity of taking goods of smaller value than those which he actually took and the goods of smaller value would have been sufficient to cover the rent, he may be liable for taking an excessive distress¹⁵.

Claiming and distraining for a greater amount of rent than is actually due does not give a right of action if the distress is not excessive for the rent really due¹⁶. If, however, more goods are seized than are necessary to satisfy the actual arrears, the right of action arises¹⁷. A claim will not lie for merely distraining for more rent than is in arrear, even though it is alleged that the distress was made maliciously¹⁸.

In cases of excessive distress the tenant cannot sue the person into whose possession the goods have come; his remedy is against his landlord¹⁹.

¹ *Carter v Carter* (1829) 5 Bing 406 (rent reduced by land tax and outgoings; landlord distraining for full rent).

² See 2 Co Inst 107; *Bayliss v Fisher* (1830) 7 Bing 153; *Piggott v Birtles* (1836) 1 M & W 441 at 447 per Parke B. Blackstone, however, comments: 'An action of trespass is not maintainable on this account, it being no injury at common law' (3 Bl Com (14th Edn) 12); and see *Lynne v Moody* (1729) 2 Stra 851.

3 See 52 Hen 3 (Statute of Marlborough) (1267) c 4 (which enacts that distress is to be reasonable and not too great and that he that takes great and unreasonable distress is to be grievously amerced for the excess of such distresses); and PARA 979 note 1 ante.

4 *Field v Mitchell* (1806) 6 Esp 71; *Rapley v Taylor and Smith* (1883) Cab & El 150.

5 *Roden v Eyton* (1848) 6 CB 427; *Wells v Moody* (1835) 7 C & P 59.

6 *Cook v Corbett* (1875) 24 WR 181, CA; and see PARA 1019 ante.

7 *Clarke v Holford* (1848) 2 Car & Kir 540.

8 *Rapley v Taylor and Smith* (1883) Cab & El 150.

9 *Smith v Ashforth* (1860) 29 LJ Ex 259. If it were conclusive, probably no distress could be deemed excessive (*Smith v Ashforth* supra at 260 per Martin J), for the goods may have been improperly lotted or allowed to stand in the rain, or otherwise sold under unfair conditions, so that they have not been sold at the best price (*Poynter v Buckley* (1833) 5 C & P 512).

10 *Smith v Ashforth* (1860) 29 LJ Ex 259.

11 *Thompson v Wood* (1843) 4 QB 493.

12 *Piggott v Birtles* (1836) 1 M & W 441.

13 *Willoughby v Backhouse* (1824) 2 B & C 821 at 823; *Roden v Eyton* (1848) 6 CB 427. Thus it is an excessive distress to distrain two or three oxen for a small sum, or a horse or an ox for a small sum when a beast of less value might have been taken (2 Co Inst 107); but it is not for every trifling excess that an action for excessive distress is maintainable (*Field v Mitchell* (1806) 6 Esp 71 at 72 per Lord Ellenborough).

14 2 Co Inst 107; *Avenell v Croker* (1828) Mood & M 172; *Field v Mitchell* (1806) 6 Esp 71.

15 *Roden v Eyton* (1848) 6 CB 427.

16 *Tancred v Leyland* (1851) 16 QB 669, Ex Ch; *French v Phillips* (1856) 1 H & N 564, Ex Ch; *Glynn v Thomas* (1856) 11 Exch 870; *Phillips v Whitsed* (1860) 2 E & E 804.

17 *Crowder v Self* (1839) 2 Mood & R 190.

18 *Stevenson v Newnham* (1853) 13 CB 285, Ex Ch. If, however, the tenant pays the excess, he may recover it back in a claim for excessive distress (*Fell v Whittaker* (1871) LR 7 QB 120); but not in a claim for money had and received (*Glynn v Thomas* (1856) 11 Exch 870). The rule may be contrasted with that in cases of execution where an officer of the court may be liable even in the absence of malice: *Moore v Lambeth County Court Registrar (No 2)* [1970] 1 QB 560, [1970] 1 All ER 980, CA.

19 *Whitworth v Smith* (1832) 5 C & P 250.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1081. Meaning of replevin.

(iv) Replevin

1081. Meaning of replevin.

Replevin is a process to obtain a redelivery to the owner of chattels which have been wrongfully distrained or taken from him, upon his finding sufficient security for the rent and costs of the claim and undertaking that he will pursue a claim against the distrainer to determine the right to distrain. The term 'replevin' is applied both to the redelivery of the goods¹ and the claim in which the right is tried². Wherever the object of proceedings is to procure the restitution of the specific chattels taken instead of compensation in damages, the proper course is an action of replevin; as an alternative, damages can be recovered in trespass³.

1 This is also known as the 'replevy'.

2 Co Litt 145b; Bac Abr, Replevin and Avowry (A).

3 *Gibbs v Cruikshank*(1873) LR 8 CP 454 at 459; *Mennie v Blake* (1856) 6 E & B 842.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1082. When replevin is available.

1082. When replevin is available.

Replevin is not available where the distress was originally lawful¹; but whenever there has been a distress which is wholly illegal, and not merely irregular or excessive, the tenant has his remedy by replevin². Thus it lies where the relationship of landlord and tenant did not exist³; where there was occupation but no demise at a fixed rent⁴; where no rent was in fact due, or where rent due was released before distress, or where the tenant has satisfied the rent by payments on behalf of the landlord necessary to protect his own possession⁵; or where the rent distrained for is not due though other rent is due⁶; where the title of the person distraining has expired and he is not entitled to the rent⁷; where the entry was illegal⁸; where the goods have been detained after tender of rent and costs before the impounding⁹; or where the things distrained are privileged¹⁰. It may be resorted to in order to obtain the return of all goods and cattle which may be lawfully distrained, but not of fixtures¹¹, animals *ferae naturae* in a wild state, and other things which from their nature cannot be the subject of distress¹².

1 *Johnson v Upham* (1859) 28 LJQB 252 at 256 per Lord Campbell. Thus it will not lie if any part of the rent claimed was due, for in such a case the distress is not illegal: *White v Greenish* (1861) 11 CBNS 209 (a case in which a person who was entitled only to a half of the rent has distrained for the whole).

2 As to illegal distress see PARA 1076 ante; and as to irregular distress see PARA 1077 ante.

3 *Walker v Giles* (1849) 6 CB 662; and see PARA 908 ante.

4 *Hegan v Johnson* (1809) 2 Taunt 148; *Dunk v Hunter* (1822) 5 B & Ald 322; *Regnart v Porter* (1831) 7 Bing 451; and see PARAS 908-909 ante.

5 *Sapsford v Fletcher* (1792) 4 Term Rep 511; *Taylor v Zamira* (1816) 6 Taunt 524; *Davis v Gyde* (1835) 2 Ad & El 623; *Cooper v Robinson* (1842) 10 M & W 694 (release).

6 *Roskruge v Caddy* (1852) 7 Exch 840 at 842-843; and see PARA 911 ante.

7 *Downs v Cooper* (1841) 2 QB 256; and see PARA 913 et seq ante.

8 *Tunncliffe v Wilmot* (1847) 2 Car & Kir 626; and see PARA 1003 et seq ante.

9 *Evans v Elliott* (1836) 5 Ad & El 142; and see PARA 1013 et seq ante.

10 *Eaton v Southby* (1738) Willes 131; and see PARA 930 et seq ante.

11 *Gibbs v Cruikshank* (1873) LR 8 CP 454.

12 *Niblet v Smith* (1792) 4 Term Rep 504; *Darby v Harris* (1841) 10 LJQB 294 at 295 per Patteson J.

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1083. Who may proceed and against whom.

Proceedings in replevin consist of two independent parts: (1) the replevy, which is the tenant giving security that he will prosecute an action for replevin, whereupon the goods are restored; and (2) the claim so undertaken to be brought, in which the right to the goods is tried. The tenant may replevy so long as the goods remain unsold¹, but only within six years².

The proceedings must be brought by the owner of the goods, that is the person who has the property, absolute or qualified, in the goods³. A special property in them, such as that of a bailee or pledgee, is sufficient⁴. An executor may sue in replevin to recover his testator's goods⁵.

The claim will lie either against the person actually making the distress, or the person who has authorised the distress, or both of them⁶.

1 *Jacob v King* (1814) 5 Taunt 451.

2 Limitation Act 1980 s 2; and see LIMITATION PERIODS vol 68 (2008) PARA 979.

3 Co Litt 145b; *Peacock v Purvis* (1820) 2 Brod & Bing 362; *Fenton v Logan* (1833) 9 Bing 676.

4 Co Litt 145b; *Swaffer v Mulcahy* [1934] 1 KB 608.

5 *Arundell v Trevill* (1662) 1 Sid 81 at 82.

6 Bullen *Law of Distress for Rent* (2nd Edn) 279.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1084. Commencement of replevin proceedings.

1084. Commencement of replevin proceedings.

Proceedings in replevin are commenced in the county court of the district in which the goods subject to replevin have been seized¹, irrespective of the value of the goods seized. The district judge is empowered to approve of replevin bonds, to grant replevins, and to issue all necessary process in relation thereto; any such process is executed by a bailiff of the court². The district judge, at the instance of the party whose goods are seized, must cause the same goods to be replevied to that party upon his giving security³ to prosecute a claim against the distrainer, either in the High Court or in the county court⁴.

- 1 See the County Courts Act 1984 s 144, Sch 1 para 1(2), (3) (as amended); notes 2-3 infra; and COURTS.
- 2 Ibid Sch 1 para 1(2) (Sch 1 para 1 amended by virtue of the Courts and Legal Services Act 1990 s 74).
- 3 County Courts Act 1984 Sch 1 para 1(3) (as amended: see note 2 supra).
- 4 See ibid Sch 1 para 2(1); and PARA 1085 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1085. Security.

1085. Security.

It must be made a condition of the security that the replevisor will commence a claim against the seisor in the High Court within one week from the date when the security is given or in a county court within one month from the date¹.

In either case the replevisor must give security, to be approved by the district judge having power in the matter, for such amount as the district judge thinks sufficient to cover both the probable cost of the claim and the alleged rent or damage in respect of which the distress has been made². In either case the security is conditioned to prosecute the claim with effect³ and without delay⁴ and to make return of the goods if their return is ordered in the claim⁵.

Upon delivery of the goods to the replevisor the goods become liable to distress for subsequent rent; and will pass to the tenant's trustee in bankruptcy⁶. When the goods have been replevied the lien of the distrainor is determined⁷.

1 County Courts Act 1984 s 144, Sch 1 para 2(1).

2 Ibid Sch 1 para 2(2)(a)(i) (amended by virtue of the Courts and Legal Services Act 1990 s 74). In a case where the goods replevied have been seized otherwise than under colour of distress, the value of the goods is to be covered instead of the alleged rent or damage in respect of which the distress was made: County Courts Act 1984 Sch 1 para 2(2)(a)(ii).

3 This means to a successful termination: *Tummons v Ogle* (1856) 6 E & B 571; *Morgan v Griffith* (1740) 7 Mod Rep 380; *Perreau v Bevan* (1826) 5 B & C 284; *Jackson v Hanson* (1841) 8 M & W 477; *Tunncliffe v Wilmot* (1847) 2 Car & Kir 626.

4 This means with due diligence, for though the condition is satisfied if a suit is commenced and carried on according to the ordinary practice of the court, want of due diligence may constitute a breach of the condition: *Gent v Cutts* (1847) 11 QB 288; *Morris v Matthews* (1841) 2 QB 293; *Harrison v Wardle* (1833) 5 B & Ad 146; and see *Axford v Perrett* (1828) 4 Bing 586. If the claimant in replevin is hindered from prosecuting his suit by the default of the defendant the latter will be restrained from proceeding on the claimant's bond: *Evans v Bowen* (1849) 7 Dow & L 320.

5 County Courts Act 1984 Sch 1 para 2(2)(b).

6 *Bradyll v Ball* (1785) 1 Bro CC 427 at 432-433; *Wilton v Wiffen* (1830) 8 LJOSKB 303.

7 Formerly the sheriff was liable if he accepted insufficient sureties (see *Scott v Waithman* (1822) 3 Stark 168; and *Plumer v Brisco* (1847) 11 QB 46), but it is understood that the district judge (who now has responsibility for replevin to the exclusion of the sheriff: see the County Courts Act 1984 Sch 1 para 1 (as amended); and PARA 1084 ante) is not so liable. As to the office of sheriff see generally SHERIFFS.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1086. Proceedings.

1086. Proceedings.

In the claim for replevin the replevisor is claimant and the distrainer is defendant¹, and after the issue of the claim form² the claim proceeds in the same way as any other³. Unless the proceedings are removed to the High Court the county court has full jurisdiction whatever the amount of the rent, and though title comes into question⁴.

If any party to any proceedings in a county court is dissatisfied with the determination of the judge or jury, he may appeal from it to the Court of Appeal in such manner and subject to such conditions as may be provided by the Civil Procedure Rules⁵.

1 See PARA 1083 text to note 6 ante.

2 See CPR Pt 7.

3 See *Bradyll v Ball* (1785) 1 Bro CC 427.

4 *Fordham v Akers* (1863) 4 B & S 578; *R v Raines* (1853) 1 E & B 855.

5 County Courts Act 1984 s 77(1) (amended by the Civil Procedure Act 1997 s 10, Sch 2 para 2(7)); *Smith v Enright* (1893) 63 LJQB 220; and CIVIL PROCEDURE vol 12 (2009) PARA 1679; COURTS. Appeals are regulated by CPR Pt 52.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1087. Damages.

1087. Damages.

If the claimant succeeds, as the goods are restored on the replevin, he is generally awarded the expenses of the replevy and no other damages. He is, however, entitled to recover any actual damage suffered by reason of the wrongful taking or detention of the goods¹, including annoyance and injury to reputation if alleged and proved². After judgment for the claimant in replevin he is precluded from bringing any other claim for damages for taking the same goods in respect of which the replevin was brought³, but the bar does not extend to other causes of action arising out of the same distress, such as trespass to the land⁴. A new trial will only be granted under special circumstances⁵.

1 *Gibbs v Cruikshank* (1873) LR 8 CP 454.

2 *Smith v Enright* (1893) 63 LJQB 220; and cf *Dixon v Calcraft* [1892] 1 QB 458, CA.

3 *Gibbs v Cruikshank* (1873) LR 8 CP 454.

4 *Gibbs v Cruikshank* (1873) LR 8 CP 454; and see generally ESTOPPEL.

5 *Parry v Duncan* (1831) 7 Bing 243; and see *Edgson v Cardwell* (1873) LR 8 CP 647.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1088. If defendant succeeds.

1088. If defendant succeeds.

If the defendant succeeds he is entitled, when suing in the High Court, to a return of the goods distrained and his costs (not including the costs of distress)¹, for which he will have a writ of fieri facias².

1 *Jamieson v Trevelyan* (1855) 10 Exch 748. If the goods were not returned the defendant could formerly obtain a 'capias in withernam' requiring the sheriff to take other equal distress of the plaintiff and deliver it to the defendant to keep until the original distress is restored. The process has never been abolished, but is, perhaps, to be regarded as obsolete.

2 As to writs of fieri facias see CIVIL PROCEDURE vol 12 (2009) PARA 1266.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(iv) Replevin/1089. Breach of security bond.

1089. Breach of security bond.

If the replevisor breaks the condition of the bond, as by non-prosecution of the claim, the distrainer may recover damages in respect of the loss which he has suffered by virtue of the breach¹. The claim may be brought in the county court in a case falling within its jurisdiction². The sureties are liable only for rent actually in arrear at the date of the distress and the costs of the replevin claim³, and in no case can their liability exceed the amount of the penalty and the costs of the claim on the bond⁴. The fact that, in the replevin claim, the distrainer has obtained a judgment for the amount of the rent which is unsatisfied is no defence to the claim on the bond⁵.

When goods of an undertenant, lodger or stranger are taken, an order can be obtained for their restoration in certain cases⁶.

1 The damages recoverable will ordinarily be the arrears of rent and the expenses of the distrainer. In *Dix v Groom* (1880) 5 Ex D 91, it was held that the plaintiff had the option of claiming either the sum secured by the replevin bond or damages, and that, if he claimed the sum secured, and the judgment went by default, he might sign final judgment subject to the defendant's right to obtain a stay on payment of the amount actually due and costs; on the other hand, if he claimed damages, any judgment by default would be interlocutory only pending the ascertainment of damages; cf CPR 12.3(2), 12.5(1), (2), (3), 15.3. It seems that now the usual and proper course is to claim the actual sum recoverable: see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 130.

2 As to the jurisdiction of county courts of contract claims see COURTS vol 10 (Reissue) PARA 712.

3 *Ward v Henley* (1827) 1 Y & J 285; *Dix v Groom* (1880) 5 Ex D 91.

4 *Hefford v Alger* (1808) 1 Taunt 218; *Branscombe v Scarborough* (1844) 6 QB 13.

5 *Turnor v Turner* (1820) 2 Brod & Bing 107.

6 See PARA 959 ante.

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(v) Claim for Damages

1090. Right of claim for wrongful distress.

A claim for damages lies for any wrongful distress whether it is illegal, irregular, or excessive¹.

¹ As to proceedings under the Law of Distress Amendment Act 1908 s 2 (as amended) see PARA 959 ante. As to claims for double value see PARA 1098 post. As to illegal distress see PARA 1076 ante; as to irregular distress see PARA 1077 et seq ante; and as to excessive distress see PARA 1080 ante. As to damages generally see DAMAGES.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(v) Claim for Damages/1091. Who may sue.

1091. Who may sue.

For any form of wrongful distress a claim will lie at the suit of the tenant, or the owner of the goods, or of a person having the mere enjoyment and use of the chattels¹.

Where the cause of action is that the landlord has retained the overplus², the tenant must not sue for money had and received for his use, but in tort for the breach of the statutory obligation to pay over the surplus to the sheriff or the under-sheriff³.

1 *Swire v Leach* (1865) 18 CBNS 479 (illegal distress: see PARA 1076 ante); *Kerby v Harding* (1851) 6 Exch 234 (irregular distress: see PARA 1077 et seq ante); *Fell v Whittaker* (1871) LR 7 QB 120; *Fisher v Algar* (1826) 2 C & P 374; *Wilkinson v Ibbett* (1860) 2 F & F 300 (excessive distress: see PARA 1080 ante).

2 As to overplus see PARA 1056 ante.

3 *Yates v Eastwood* (1851) 6 Exch 805; *Evans v Wright* (1857) 2 H & N 527.

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1092. Illegal distress; who may be sued.

A claim for illegal distress may be brought against the landlord if he distrained personally. In the case of distraint by a bailiff, a claim for illegal distress may be brought against the bailiff; but a claim will also lie against the landlord if he authorised the illegal act¹ or ratified it after it came to his knowledge². Thus the landlord will be liable where he has authorised a distress when he has no right to distrain; but it must be shown that he has in fact authorised it³.

If the landlord detains goods privileged from distress, and therefore must have knowledge of the illegality, he will be deemed to have ratified the bailiff's act⁴, and his presence on the demised premises at or immediately after the commission of the illegal act is some evidence that he assented to it⁵. Similarly, the landlord is deemed to have ratified if he retains the proceeds of sale of distrained goods knowing that it is alleged that his bailiff has made an illegal distress⁶. The mere receipt of the proceeds of sale, however, without inquiry and without knowledge of anything illegal done by the bailiff is not sufficient to make the landlord liable; for if the landlord had no knowledge that a trespass had been committed and received the money in the belief that his warrant had been lawfully executed, the receipt is no evidence of assent⁷; and if, when he knows the circumstances, he repudiates the act he will not be liable⁸.

An agent of the landlord who authorises an illegal distress will be liable personally if he is the person actually ordering the thing to be done, but not where he is a mere transmitter of authority from the landlord to the bailiff and does not interfere further⁹.

1 See the text and note 3 infra.

2 See *Lewis v Read* (1845) 13 M & W 834, where it was said that the landlord was not liable unless he ratified the wrongful act after it came to his knowledge or unless he meant to take upon himself, without inquiry, the risk of any wrongful acts which the bailiff might have committed and to adopt all his acts. See also the text and notes 4-8 infra.

3 *Jones v Buckley* (1838) 2 Jur 204; and see *Botteley v Rogers* (1847) 8 LTOS 559; *Crabb v Killick* (1834) 6 C & P 216 (a case of irregular and excessive distress).

4 *Gauntlett v King* (1857) 3 CBNS 59.

5 *Moore v Drinkwater* (1858) 1 F & F 134; and see PARA 1001 ante.

6 *Carter v St Mary Abbots, Kensington Vestry* (1900) 64 JP 548, CA; *Becker v Riebold* (1913) 30 TLR 142.

7 *Lewis v Read* (1845) 13 M & W 834; *Freeman v Rosher* (1849) 13 QB 780; *Green v Wroe* [1877] WN 130.

8 *Hurry v Rickman and Sutcliffe* (1831) 1 Mood & R 126.

9 *Bennett v Bayes* (1860) 5 H & N 391.

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1093. Irregular and excessive distress; who may be sued.

In the case of an irregular distress a claim is against the landlord if he personally committed the act constituting the irregularity. Where the irregular act was committed by a bailiff, the claim lies at the election of the claimant either against the bailiff or his employer provided that the employer authorised or ratified the distress¹ and it makes no difference that the irregular act was done without the employer's knowledge or subsequent sanction². If thought fit the employer and bailiff may be made co-defendants³.

In like manner a claim for an excessive distress may be brought either against the bailiff or the landlord; but where an excessive distress has been made, the landlord may compensate the tenant and recover the amount against the bailiff⁴.

1 For the rule that the employer is liable for any irregularities committed by the bailiff in the course of his employment see PARA 1001 ante. For the rule that a distress may be retrospectively adopted see PARA 992 ante. As to irregular distress see PARA 1077 et seq ante.

2 *Haseler v Lemoyne* (1858) 5 CBNS 530. 'Where I send a man to distrain and he distrains something else than I authorised him to distrain I am not liable; but if he does distrain on the things I authorised him to distrain it is then my business to see that he does what is requisite to make it a good distress of such things; and if I do not see to it myself I am answerable for any irregularity he may commit': *Haseler v Lemoyne* supra as reported in 28 LJCP 103 at 104 per Cockburn CJ.

3 *Child v Chamberlain* (1834) 6 C & P 213.

4 *Megson v Mapleton* (1883) 49 LT 744. As to excessive distress see PARA 1080 ante.

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1094. Damages recoverable for illegal distress.

In the case of an illegal distress the distrainor is a trespasser ab initio, and the full value of the goods which have been lost to the claimant, without any deduction for rent, is recoverable as damages¹, unless there are circumstances of mitigation which the court ought to take into consideration². If after proceedings are commenced, the landlord returns the goods, the tenant may still give evidence of their damaged condition³. The fact that the claimant has only a limited property in the goods is irrelevant⁴. Where the landlord has placed a man in possession, the claimant is entitled to damages, although he has had the use of the goods all the time⁵; and it has been held that substantial damages may be awarded even if no actual damage can be proved⁶. Where the wrong complained of is the removal of fixtures, the measure of damages is not the amount of the proceeds of their sale after being severed, but may be their value to an incoming tenant, or may be their cost to the tenant⁷. If the distress is lawful as to part and illegal as to part (as where privileged goods are included in the seizure), the claimant is only entitled to damages in respect of the illegal part⁸. In the case of goods privileged from distress and improperly seized and sold, an action for conversion lies, and the claimant is entitled to recover the full value of the goods, though he may be only a bailee of them⁹.

1 *Attack v Bramwell* (1863) 3 B & S 520; *Keen v Priest* (1859) 4 H & N 236; *Grunnell v Welch* [1906] 2 KB 555, CA. As to illegal distress see PARA 1076 ante.

2 *Edmondson v Nuttall* (1864) 17 CBNS 280 at 294-296 per Willes J; and see *Smith v Enright* (1893) 63 LJQB 220; *Harvey v Pocock* (1843) 11 M & W 740.

3 *M'Grath v Bourne* (1876) IR 10 CL 160; and see *Lamb v Wall* (1859) 1 F & F 503; *Hogarth v Jennings* [1892] 1 QB 907, CA.

4 See *Swire v Leach* (1865) 18 CBNS 479; and see PARA 1091 text and note 1 ante.

5 *Bayliss v Fisher* (1830) 7 Bing 153.

6 *Interoven Stove Co Ltd v Hibbard and Painter and Shepherd* [1936] 1 All ER 263; and cf *Rookes v Barnard* [1964] AC 1129, [1964] 1 All ER 367, HL.

7 *Moore v Drinkwater* (1858) 1 F & F 134.

8 *Harvey v Pocock* (1843) 11 M & W 740; and see *Bail v Mellor* (1850) 19 LJ Ex 279.

9 *Swire v Leach* (1865) 18 CBNS 479.

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1095. Damages for irregular distress.

In a claim for damages for irregular distress¹ a claimant can only recover such special damage as he may prove², though in appropriate cases this may be the full value of the goods seized less the rent in arrear and the proper charges of the distress³. In the absence of proof of special damage the claimant cannot recover even nominal damages and the defendant is entitled to the verdict⁴.

1 As to irregular distress see PARA 1077 et seq ante.

2 See the Distress for Rent Act 1737 s 19.

3 *Knotts v Curtis* (1832) 5 C & P 322.

4 *Lucas v Tarleton* (1858) 3 H & N 116; *Rodgers v Parker* (1856) 18 CB 112; *Rocke v Hills* (1887) 3 TLR 298.

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1096. Damages for excessive distress.

For an excessive distress, the damages, in case of a sale of the goods, are the fair value of the goods after deducting rent and costs¹. The tenant does not waive his right of action by entering into an agreement with the distrainor respecting the sale of the goods seized². If no sale has taken place the claimant is entitled to nominal damages, even though he does not prove any actual damage, since the law will presume damage from a man being prevented from dealing with his property³. If the distress is made for more rent than is in arrear, and the tenant pays the sum to get rid of the distress, he may recover the excess he was obliged to pay and damages for the annoyance he may have suffered⁴. Whether the goods are impounded on the premises or off the premises, the tenant is entitled to recover such actual damage as he has sustained through loss of the use and enjoyment of the excess taken, or of the power of disposing freely thereof, or through the inconvenience and expense in procuring sureties to a larger amount than he otherwise would have required on replevying⁵. It has been held that exemplary damages may not be awarded where the seizure has taken place by mistake⁶; although it remains open for consideration whether on proof of malice a claimant may be able in appropriate cases to recover exemplary damages⁷.

1 *Wells v Moody* (1835) 7 C & P 59; *Clarke v Holford* (1848) 2 Car & Kir 540; *Smith v Ashforth* (1860) 29 LJ Ex 259. As to excessive distress see PARA 1080 ante.

2 *Willoughby v Backhouse* (1824) 2 B & C 821; *Sells v Hoare* (1824) 1 Bing 401.

3 *Chandler v Doultton* (1865) 3 H & C 553; *Mudhun Mohun Doss v Gokul Doss* (1866) 10 Moo Ind App 563, PC. As to the position in an illegal distress see PARA 1094 ante.

4 *Fell v Whittaker* (1871) LR 7 QB 120.

5 *Piggott v Birtles* (1836) 1 M & W 441. There were not allowed, as damages for excessive distress, the extra costs of a replevin action beyond those allowed on taxation in that action: *Grace v Morgan* (1836) 2 Bing NC 534. As to replevin see PARA 1081 et seq ante.

6 *Moore v Lambeth County Court Registrar (No 2)* [1970] 1 QB 560, [1970] 1 All ER 980, CA.

7 *Moore v Lambeth County Court Registrar (No 2)* [1970] 1 QB 560 at 572, [1970] 1 All ER 980 at 986, CA, per Sachs LJ. As to exemplary damages see DAMAGES vol 12(1) (Reissue) PARAS 811, 1115-1116.

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1097. Jurisdiction of county court.

A claim for irregular, excessive, or illegal distress may be brought in the county court¹.

¹ See the County Courts Act 1984 s 15(1) (as amended); and COURTS vol 10 (Reissue) PARA 712. As to irregular distress see PARA 1077 et seq ante; as to illegal distress see PARA 1076 ante; and as to excessive distress see PARA 1080 ante.

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(vi) Other Remedies

1098. Double value.

As well as the remedy provided by the common law for an illegal distress¹ in the particular instance of a distress for rent when no rent is in arrear followed by a sale of the goods, the owner of the goods is entitled by statute to recover in a claim against the distrainer double the value of the goods taken and sold².

The offence is not complete unless a sale of the chattels actually takes place³.

The provision is absolute, so that less damages than double value cannot be awarded to a successful claimant⁴.

1 See PARAS 1090, 1092, 1094, 1097 ante. As to illegal distress see PARA 1076 ante.

2 Distress for Rent Act 1689 s 4 (amended by the Statute Law Revision Act 1888; and the Administration of Justice Act 1965 s 34(1), Sch 2). The provision in the Distress for Rent Act 1689 s 4 (as amended) that the owner could recover 'with full costs' was repealed by the Administration of Justice Act 1965 s 34(1), Sch 2. A tenant who is not the owner of the goods distrained cannot recover the double value: see *Chancellor v Webster* (1893) 9 TLR 568.

3 See *Masters v Farris* (1845) 1 CB 715, but the statute was held to apply where the goods were distrained after judgment had been obtained for the rent, though the judgment had not been satisfied: *Potter v Bradley & Co* (1894) 10 TLR 445 at 446.

4 *Masters v Farris* (1845) 1 CB 715.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/2. DISTRESS FOR RENT/(17) ILLEGAL, IRREGULAR OR EXCESSIVE DISTRESS, AND THE ASSOCIATED REMEDIES/(vi) Other Remedies/1099. Injunction to restrain distress.

1099. Injunction to restrain distress.

An injunction may be granted in proceedings commenced by the tenant¹ where he complains either that a distress made is wrongful² or that a wrongful distress is threatened³. However, in as much as the right of a landlord to distrain for rent is a legal right enabling him if the rent is in arrear to obtain security for its payment, the court will not generally interfere by injunction (unless it is a flagrant case) except upon the condition of the applicant paying the amount claimed for rent into court⁴.

1 The High Court may by order (whether interim or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so: Supreme Court Act 1981 (prospectively renamed the Senior Courts Act 1981) s 37(1).

2 *Walsh v Lonsdale* (1882) 21 ChD 9, CA.

3 *Shaw v Earl of Jersey* (1879) 4 CPD 120; on appeal 4 CPD 359, CA.

4 *Shaw v Earl of Jersey* (1879) 4 CPD 359, CA; *Carter v Salmon* (1880) 43 LT 490, CA; and see *Sanxter v Foster* (1841) Cr & Ph 302 at 303. See also *Steel Linings Ltd v Bibby & Co (a firm)* [1993] RA 27, [1993] NLJR 511, CA (distress for rates); and PARA 111 post.

UPDATE

1099 Injunction to restrain distress

NOTE 1--Supreme Court Act 1981 cited as Senior Courts Act 1981 as from 1 October 2009: SI 2009/1604.

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1100. Wearing apparel etc.

The wearing apparel and bedding of the tenant or his family and the tools and implements of his trade, are exempt from distress¹. On complaint that goods or chattels so exempt from distress for rent have been taken under a distress, a magistrates' court may by summary order direct that the goods and chattels so taken, if not sold, be restored, or if they have been sold, that such sum as the court may determine to be their value is to be paid to the complainant by the person who levied the distress or directed it to be levied².

¹ See the Law of Distress Amendment Act 1888 s 4 (as amended); the County Courts Act 1984 s 89(1)(a) (as substituted); and PARA 942 ante.

² Law of Distress Amendment Act 1895 s 4.

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1101. Agricultural holdings.

In the case of agricultural holdings there are special provisions for settling any dispute arising in respect of any distress having been levied contrary to statutory restriction¹.

¹ See the Agricultural Holdings Act 1986 s 19; and AGRICULTURAL LAND vol 1 (2008) PARA 348.

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1102. Rescue.

Although it is generally a breach of the law, a rescue¹ is a legal remedy of an aggrieved person when a distress is wholly wrongful and not merely irregular or excessive, for example, if the distress has been made for a payment which is not rent or if privileged goods are taken². The rescue must take place before the goods are impounded, for after the impounding, whether the distress was lawful or not, the goods cannot be retaken³, unless after impounding the distrainor abuses the distress by working it⁴.

In these cases, rescue can only be legally made by the tenant or the owner of the chattels or his employee or agent, and not by a stranger⁵, so that if the goods of two persons are wrongfully taken in one distress each can rescue only his own goods, in as much as he is a stranger as regards the other goods⁶.

1 See PARAS 1070, 1072 ante.

2 *Keen v Priest* (1859) 4 H & N 236 at 241. As to illegal distress see PARA 1076 ante; as to irregular distress see PARA 1077 et seq ante; and as to excessive distress see PARA 1080 ante.

3 *Cotsworth v Betison* (1696) 1 Ld Raym 104. As to impounding see PARA 1013 et seq ante.

4 *Smith v Wright* (1861) 6 H & N 821.

5 1 Roll Abr, Distress (Q).

6 Fitz Nat Brev 102.

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1103. Fines.

An early statute, passed to discourage the use of self-help for redressing wrongs, forbids the levying by any person of any revenge or unlawful¹ distress upon his neighbour or any other person of his own authority without an award of the court, even though he may have received damage or injury for which he seeks amends². If any person takes any such revenge of his own authority without award of the court and is convicted thereof, he is punishable by fine, according to the trespass; if one neighbour takes a distress of another person without award of the court as a result of which the other person suffers damage, the offender is to be punished in the same way according to the quantity of the trespass; full and sufficient amends are nevertheless to be made to persons who have sustained loss by such distresses³.

1 The enactment applies only to distresses levied for purposes which are not according to law: 2 Co Inst 104.

2 See the Distress Act (1267). As far as can be ascertained, there have been no cases under this Act for at least the last 100 years. As to remedies for illegal distress see PARA 1076 ante.

3 See note 2 supra.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1104. Enforcement of payment of non-domestic rates by distress.

3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES

(1) NON-DOMESTIC RATES

1104. Enforcement of payment of non-domestic rates by distress.

Non-domestic rates are a form of taxation leviable by local authorities¹. The authorities responsible for levying non-domestic rates are known as billing authorities². Non-domestic rates are leviable only in respect of non-domestic properties³.

The payment of non-domestic rates may be enforceable by distress⁴, or as an alternative, may be recovered in a court of competent jurisdiction⁵.

The power of distress for rates is purely statutory; in its nature it is somewhat analogous to an execution levied to enforce a legal money liability⁶. The statutory rules relating to distress for rent⁷ do not apply to distress for rates.

1 As to non-domestic rates generally see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 3 et seq.

2 As to billing authorities for the purposes of non-domestic rates see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5. As to billing authorities for the purposes of council tax rating see PARA 816 post; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229.

The functions of a billing authority in relation to the administration and enforcement of non-domestic rates may, to the prescribed extent, be exercised by, or by the employees of, such person as may be authorised to exercise them by the authority whose functions they are: see the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996, SI 1996/1880; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

3 See RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 7 et seq. As to the council tax which is levied in relation to domestic properties see PARA 1116 et seq post; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 227 et seq.

4 See the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14 (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 193 et seq.

5 See *ibid* reg 20 (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 193-194, 200.

6 See *Potts v Hickman*[1941] AC 212, [1940] 4 All ER 491, HL (where, however, it was held that a distraint for rates was not 'execution' within the Landlord and Tenant Act 1709 s 1 (as amended) (see PARA 1032 ante), so as to entitle a landlord to claim payment of arrears of rent in priority).

7 I.e. the Distress for Rent Rules 1988, SI 1988/2050 (as amended): see PARA 994 et seq ante. See also PARA 904 ante; and cf para 1108 post.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1105. Pre-requisites of distress for non-domestic rates.

1105. Pre-requisites of distress for non-domestic rates.

No distress proceedings may be taken unless a liability order¹ has been made². Before a liability order can be made the billing authority³ must serve a reminder notice⁴.

1 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 193.

2 See the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(1); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. Under the General Rate Act 1967, distress for rates was levied after the issue of a distress warrant by the justices: see s 97 (repealed).

3 As to billing authorities for the purposes of non-domestic rates see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

4 See RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 193-195. For the meaning of 'reminder notice' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 193.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1106. Power of the authority to levy the appropriate amount by distress.

1106. Power of the authority to levy the appropriate amount by distress.

Where a liability order¹ has been made, the billing authority² which applied for the order may levy the 'appropriate amount'³ by distress and sale of the goods of the debtor⁴ against whom the order was made⁵. A distress may be made anywhere in England and Wales⁶.

The person levying distress on behalf of a billing authority must carry with him the written authorisation of the authority which he must show to the debtor if so requested⁷.

1 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 193. As to pre-requisites of distress for non-domestic rates see PARA 1105 ante.

2 As to billing authorities for the purposes of non-domestic rates see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

3 The appropriate amount for the purposes of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(1) is the aggregate of: (1) an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made (reg 14(2)(a)); and (2) a sum determined in accordance with reg 14(2)(b), Sch 3 (as substituted and amended) in respect of charges connected with the distress (reg 14(2)(b)). See further RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

4 For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

5 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(1); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

6 Ibid reg 14(6); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. See also *Quinlan v Hammersmith and Fulham London Borough Council* [1989] RA 43, 153 JP 180, CA (distress on a public highway is lawful).

7 See the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(5); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. The person levying the distress must hand to the debtor, or leave at the premises where the distress is levied, a copy of reg 14 (as amended) and Sch 3 (as substituted and amended) and a memorandum setting out the appropriate amount, and must hand to the debtor a copy of any close or walking possession agreement entered into: reg 14(5). A failure to comply with reg 14(5) does not render the distraint process itself unlawful and the debtor is only entitled to recover special damage which has resulted from the irregularity: *Wilson v South Kesteven District Council* [2000] 4 All ER 577, [2001] 1 WLR 387, CA; and see PARA 1110 below.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1107. Goods on which distress may be levied.

1107. Goods on which distress may be levied.

Distress for non-domestic rates may be levied on the goods of the debtor¹. Enactments which protect goods of any class from distress are not affected by the provision authorising distress for rates². It is expressly provided in relation to distress for non-domestic rates that no person making a distress may seize any goods of the debtor which comprise such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his family³.

1 See the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(1); para 1106 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. Permission of the court is usually required for the taking of proceedings in execution of a judgment against a national serviceman or certain reservists or auxiliaries, including distress for rates: see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 6(2); and ARMED FORCES vol 2(2) (Reissue) PARA 85.

2 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(8); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. The provision authorising distress for rates is reg 14 (as amended) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195): see reg 14(8).

3 See *ibid* reg 14(1A) (added by SI 1993/774); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1108. Who may levy distress.

1108. Who may levy distress.

No distress for non-domestic rates¹ may be made other than by a person who is authorised to act as a bailiff by a general certificate granted under the Law of Distress Amendment Act 1888².

¹ See under the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14 (as amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

² Ibid reg 14(6A) (added by SI 1998/3089). For a general certificate granted under the Law of Distress Amendment Act 1888 see s 7 (as amended); and PARAS 994, 999 ante. As to certification of bailiffs see PARA 994 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1109. Tender and payment before sale.

1109. Tender and payment before sale.

If, before any goods are seized, the appropriate amount¹ (including charges arising up to the time of the payment or tender) is paid or tendered to the billing authority², the authority must accept the amount and the levy must not be proceeded with³. Where the authority has seized goods of the debtor⁴ in pursuance of the distress, but before the sale of those goods the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority must accept the amount, the sale must not be proceeded with and the goods must be made available for collection by the debtor⁵.

1 For the meaning of 'appropriate amount' see PARA 1106 note 3 ante.

2 As to billing authorities for the purposes of non-domestic rates see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

3 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(3); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. As to the power of the billing authority to levy the appropriate amount by distress see PARA 1106 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

A debtor cannot halt the distraint process by tendering payment while seizure of goods is in progress: *Wilson v South Kesteven District Council* [2000] 4 All ER 577, [2001] 1 WLR 387, CA.

4 For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

5 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(4); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. See *Wilson v South Kesteven District Council* [2000] 4 All ER 577, [2001] 1 WLR 387, CA; and note 3 supra.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1110. Irregularities.

1110. Irregularities.

A distress is not to be deemed unlawful on account of any defect or want of form in the liability order¹, and no person making a distress is to be deemed a trespasser on that account². No person making a distress is to be deemed a trespasser from the beginning on account of any subsequent irregularity in making the distress, but a person sustaining special damage by reason of the subsequent irregularity may recover full satisfaction for the special damage (and no more) by proceeding in trespass or otherwise³.

1 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 193. As to the pre-requisites of distress for non-domestic rates see PARA 1105 ante.

2 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14(7); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

3 Ibid reg 14(7); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. See also *Quinlan v Hammersmith and Fulham London Borough Council* [1989] RA 43, 153 JP 180, CA; *Wilson v South Kesteven District Council* [2000] 4 All ER 577, [2001] 1 WLR 387, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1111. Excessive distress.

1111. Excessive distress.

Distress in excess of the appropriate amount is a wrongful interference with goods since the power of the billing authority¹ is limited to levying distress for the appropriate amount². A person whose goods have been unlawfully seized may bring proceedings for their recovery and for damages³. An injunction may be granted restraining bailiffs from disposing of goods seized in the course of an excessive distress, and ordering the goods to be made available for return⁴.

1 As to billing authorities for the purposes of non-domestic rates see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

2 *Steel Linings Ltd v Bibby & Co (a firm)* [1993] RA 27, [1993] NLJR 511, CA. See also *Quinlan v Hammersmith and Fulham London Borough Council* [1989] RA 43, 153 JP 180, CA (no excessive or illegal distress; distress on a public highway is lawful); *Evans v South Ribble Borough Council* [1992] QB 757, [1991] RA 191 (no effective distress where no entry to debtor's premises). For the meaning of 'appropriate amount' see PARA 1106 note 3 ante. As to wrongful interference with goods see TORT vol 45(2) (Reissue) PARA 542 et seq.

3 See TORT vol 45(2) (Reissue) PARAS 612 et seq, 670 et seq.

4 *Steel Linings Ltd v Bibby & Co (a firm)* [1993] RA 27, [1993] NLJR 511, CA. As to injunctions see generally CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1112. Appeal against distress.

1112. Appeal against distress.

A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to a magistrates' court¹. The appeal may be instituted by making a complaint to a justice of the peace², and requesting the issue of a summons directed to the billing authority which levied or attempted to levy the distress to appear before the court to answer to the matter by which he is aggrieved³.

If the court is satisfied that a levy was irregular, it may order the goods distrained to be discharged if they are in the possession of the authority⁴. The court may also by order award compensation in respect of any goods distrained and sold of an amount equal to the amount which, in the opinion of the court, would be awarded by way of special damages in respect of the goods if proceedings were brought in trespass or otherwise in connection with the irregularity⁵. If the court is satisfied that an attempted levy was irregular, it may by order require the authority to desist from levying in the manner giving rise to the irregularity⁶. In any proceedings upon an appeal in connection with distress, a statement contained in a document constituting or forming part of a record compiled by the applicant authority or an authorised person⁷ is admissible as evidence of any fact stated in it of which direct oral evidence would be admissible⁸.

1 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 15(1); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 196. As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

2 See RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 196. The magistrates' are under no duty to hear a complaint where alternative civil proceedings are more appropriate because of the factual and legal complexity of the matter: *R v Basildon Justices, ex p Holding & Barnes plc* [1994] RA 157, 158 JP 980.

3 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 15(2); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 196.

4 Ibid reg 15(3); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 196.

5 Ibid reg 15(3); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 196. Proceedings could be brought under reg 14(7) (see PARA 1110 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195): see reg 15(3). If, following irregular distress, the goods are still in the possession of the authority, the magistrates' court can only order discharge and may not award compensation: see *R v Epping Magistrates, ex p Howard and Leach* [1997] RA 258.

6 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 15(4); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 196.

7 For the meaning of 'authorised person' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 201.

8 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 21(4) (added by SI 1992/474; and amended by SI 1996/1880); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 201.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1113. Committal to prison where distress is insufficient.

1113. Committal to prison where distress is insufficient.

Where a billing authority¹ has sought to levy an amount by distress², the debtor³ is an individual, and the person making the distress reports to the authority that he was unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy the amount, the authority may apply to a magistrates' court for the issue of a warrant committing the debtor to prison⁴.

1 As to billing authorities for the purposes of non-domestic rates see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

2 See under the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 14 (as amended) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195).

3 For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195.

4 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 16(1) (amended by SI 1992/474; and SI 1993/616); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 197.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(1) NON-DOMESTIC RATES/1114. Further steps.

1114. Further steps.

Where a warrant of commitment¹ is issued against (or a term of imprisonment is fixed in the case of) a person² because of the insufficiency of goods on which to levy distress³, no steps, or no further steps, may be taken⁴ by way of distress or bankruptcy in relation to the relevant amount⁵. The 'relevant amount' is the aggregate of: (1) the appropriate amount⁶, or, as the case may be, so much of it as remains outstanding; and (2) a sum of an amount equal to the costs reasonably incurred by the applicant in respect of the application for committal⁷.

Steps by way of distress, commitment, bankruptcy, or winding up may not be taken against a person under a liability order⁸ while steps by way of another of those methods are being taken against him under it⁹. Subject to this, distress may be resorted to more than once¹⁰. Where a step is taken by way of distress for the recovery of an outstanding sum which is, or forms part of, an amount in respect of which a liability order has been made, any sum recovered thereby which is less than the aggregate of the amount outstanding and any charges arising from the statutory provisions¹¹ is to be treated as discharging first the charges, the balance (if any) being applied towards the discharge of the outstanding sum¹².

1 See PARA 1113 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 197.

2 Ie under the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 16(3): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 197.

3 As to insufficient distress see PARA 1113 ante.

4 Ie under the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, Pt III (regs 10-23) (as amended).

5 See *ibid* reg 19(1); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 199. As to the power of the billing authority to levy the appropriate amount by distress see PARA 1106; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 195. See also RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 197.

6 For the meaning of 'appropriate amount' see PARA 1106 note 3 ante.

7 See the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, regs 16(4), 19(1); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 197, 199.

8 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 193.

9 See the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, SI 1989/1058, reg 19(2); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 199.

10 *Ibid* reg 19(3); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 199.

11 Ie under *ibid* reg 14(2)(b), Sch 3 (as substituted and amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 199.

12 See *ibid* reg 19(4); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 199.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/3. DISTRESS FOR NON-DOMESTIC RATES AND DRAINAGE RATES/(2) DRAINAGE RATES/1115. Drainage rates.

(2) DRAINAGE RATES

1115. Drainage rates.

Arrears of drainage rates may be recovered by the drainage board for an internal drainage district in the same manner in which arrears of a non-domestic rate may be recovered by a billing authority¹.

¹ Land Drainage Act 1991 s 54(1) (amended by virtue of the Local Government Finance Act 1992 s 1). See further WATER AND WATERWAYS vol 101 (2009) PARA 637. As to distress for non-domestic rates see PARAS 1104-1114 ante. As to billing authorities for the purposes of non-domestic rates see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1116. Enforcement of payment of council tax by distress.

4. DISTRESS FOR COUNCIL TAX

1116. Enforcement of payment of council tax by distress.

Council tax is a form of taxation leviable by local authorities¹. The authorities responsible for levying council tax are known as billing authorities². Council tax is leviable in respect of dwellings³.

The payment of council tax is enforceable by distress⁴ as well as by other prescribed methods⁵.

The power of distress for council tax is purely statutory; in its nature it is somewhat analogous to an execution levied to enforce a legal money liability⁶. The statutory rules relating to distress for rent⁷ do not apply to distress for council tax.

1 As to council tax generally see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 227 et seq.

2 As to billing authorities for the purposes of council tax see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229. As to billing authorities for the purposes of non-domestic rating see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 5.

3 See RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 231 et seq. As to the non-domestic rate which is levied in relation to non-domestic properties see PARA 1104 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 3 et seq.

4 See the Local Government Finance Act 1992 s 14(3), Sch 4 (as amended); the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45 (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 313 et seq, 334 et seq.

5 As to provision for distress see the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613 (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

6 See *Potts v Hickman*[1941] AC 212, [1940] 4 All ER 491, HL (where, however, it was held that a distraint for rates was not 'execution' within the Landlord and Tenant Act 1709 s 1 (as amended) (see PARA 1032 ante), so as to entitle a landlord to claim payment of arrears of rent in priority). See also PARA 1104 ante.

7 Ie the Distress for Rent Rules 1988, SI 1988/2050 (as amended): see PARA 994 et seq ante. See also PARA 904 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1117. Pre-requisites of distress for council tax.

1117. Pre-requisites of distress for council tax.

No distress proceedings may be taken unless a liability order¹ has been made². Further, no distress may be made³ unless, no less than 14 days before a visit in connection with the distress is first made to the premises where it is to be levied, the billing authority⁵ has sent to the debtor⁴ written notice of the following matters⁶:

- 29 (1) the fact that a liability order has been made against the debtor⁷;
- 30 (2) the amount in respect of which the liability order was made and, where this is a different amount, the amount which remains outstanding⁸;
- 31 (3) a warning that unless the amount specified has been paid before the expiry of 14 days beginning on the date of the sending of the notice, distress may be levied⁹;
- 32 (4) notice that if distress is levied further costs will be incurred by the debtor¹⁰;
- 33 (5) the fees prescribed¹¹;
- 34 (6) the address and telephone number at which the debtor can communicate with the authority¹².

1 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 312.

2 See the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(1) (as amended); para 1118 post; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

3 See under the Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613 (as amended).

4 For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 317.

5 As to billing authorities for the purposes of council tax see PARA 1116 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229.

6 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45A(1) (reg 45A added by SI 1998/295); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336.

7 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45A(2)(a) (as added: see note 6 supra); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336.

8 Ibid reg 45A(2)(b) (as added: see note 6 supra); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336.

9 Ibid reg 45A(2)(c) (as added: see note 6 supra); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336.

10 Ibid reg 45A(2)(d) (as added: see note 6 supra); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336.

11 Ibid reg 45A(2)(e) (as added: see note 6 supra); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336. See PARA 1118 post.

12 Ibid reg 45A(2)(f) (as added: see note 6 supra); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1118. Powers of the authority to levy the appropriate amount by distress.

1118. Powers of the authority to levy the appropriate amount by distress.

Where a liability order¹ has been made, the billing authority² which applied for the order may³ levy the appropriate amount⁴ by distress and sale of the goods of the debtor⁵ against whom the order was made⁶. Distress may be made anywhere in England and Wales⁷.

The person levying distress on behalf of an authority must carry with him the written authorisation of the authority, which he must show to the debtor if so requested⁸.

1 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 312.

2 As to billing authorities for the purposes of council tax see PARA 1116 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229.

3 le subject to the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45A (as added): see PARA 1117 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 336.

4 The 'appropriate amount' is the aggregate of: (1) an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made (ibid reg 45(2)(a)); and (2) a sum determined in accordance with reg 45(2)(b), Sch 5 (as substituted and amended) in respect of charges connected with the distress (reg 45(2)(b)).

5 For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 317.

6 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(1) (amended by SI 1989/295); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

7 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(6); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335. See also *Quinlan v Hammersmith and Fulham London Borough Council* [1989] RA 43, 153 JP 180, CA (distress on a public highway is lawful).

8 See the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(5); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335. The person levying the distress must hand to the debtor or leave at the premises where the distress is levied a copy of reg 45 (as amended) and Sch 5 (as substituted and amended) and a memorandum setting out the appropriate amount, and must hand to the debtor a copy of any close or walking possession agreement entered into: reg 45(5).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1119. Goods on which distress may be levied and protection from distress.

1119. Goods on which distress may be levied and protection from distress.

Distress for council tax may be levied on the goods of the debtor¹. Enactments which protect goods of any class from distress are not affected by the provision authorising distress for council tax². It is expressly provided in relation to distress for council tax that no person making a distress may seize any goods of the debtor which comprise such tools, books, vehicles and other items of equipment as are necessary to the debtor for use personally by him in his employment, business or vocation, and such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his family³.

1 See the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(1) (as amended); para 1118 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335. For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 317. Permission of the court is usually required for the taking of proceedings in execution of a judgment against a national serviceman or certain reservists or auxiliaries, including distress for rates: see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 6(2); and ARMED FORCES vol 2(2) (Reissue) PARA 85.

2 See the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(8); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335. The provision authorising distress for rates is reg 45 (as amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

3 See *ibid* reg 45(1A) (added by SI 1993/773); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1120. Who may levy distress.

1120. Who may levy distress.

No distress for council tax¹ may be made other than by a person who is authorised to act as a bailiff by a general certificate granted under the Law of Distress Amendment Act 1888².

¹ See under the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45 (as amended).

² Ibid reg 45(6A) (added by SI 1998/295). For a general certificate granted under the Law of Distress Amendment Act 1888 see s 7 (as amended); and PARAS 994, 999 ante. As to certification of bailiffs see PARA 994 ante. As to the requirement that the person levying the distress must carry written authorisation see PARA 1118 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1121. Tender and payment before sale.

1121. Tender and payment before sale.

If, before any goods are seized, the appropriate amount¹ (including charges arising up to the time of the payment or tender) is paid or tendered to the billing authority², the authority must accept the amount and the levy must not be proceeded with³. Where the authority has seized goods of the debtor⁴ in pursuance of the distress, but before the sale of those goods the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority must accept the amount, the sale must not be proceeded with and the goods must be made available for collection by the debtor⁵.

1 For the meaning of 'appropriate amount' see PARA 1118 note 4 ante.

2 As to billing authorities for the purposes of council tax see PARA 1116 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229.

3 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(3); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335. As to the power of the authority to levy the appropriate amount by distress see PARA 1118 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

4 For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 317.

5 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(4); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1122. Irregularities.

1122. Irregularities.

A distress is not to be deemed unlawful on account of any defect or want of form in the liability order¹, and no person making a distress is to be deemed a trespasser on that account². No person making a distress is to be deemed a trespasser from the beginning on account of any subsequent irregularity in making the distress, but a person sustaining special damage by reason of the subsequent irregularity may recover full satisfaction for the special damage (and no more) by proceeding in trespass or otherwise³.

1 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 312. As to the pre-requisites of distress for council tax see PARA 1117 ante.

2 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45(7); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335.

3 Ibid reg 45(7); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335. See also *Quinlan v Hammersmith and Fulham London Borough Council* [1989] RA 43, 153 JP 180, CA.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1123. Excessive distress.

1123. Excessive distress.

Distress in excess of the appropriate amount is a wrongful interference with goods since the power of the billing authority¹ is limited to levying distress for the appropriate amount². A person whose goods have been unlawfully seized may bring proceedings for their recovery and for damages³. An injunction may be granted restraining bailiffs from disposing of goods seized in the course of an excessive distress, and ordering the goods to be made available for return⁴.

¹ As to billing authorities for the purposes of council tax see PARA 1116 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229.

² *Steel Linings Ltd v Bibby & Co (a firm)* [1993] RA 27, [1993] NLJR 511, CA. See *Quinlan v Hammersmith and Fulham London Borough Council* [1989] RA 43, 153 JP 180, CA (no excessive or illegal distress; distress on a public highway is lawful); *Evans v South Ribble Borough Council* [1992] QB 757, [1991] RA 191 (no effective distress where no entry to debtor's premises). For the meaning of 'appropriate amount' see PARA 1118 note 4 ante. As to wrongful interference with goods see TORT vol 45(2) (Reissue) PARA 542 et seq.

³ See TORT vol 45(2) (Reissue) PARAS 612 et seq, 670 et seq.

⁴ *Steel Linings Ltd v Bibby & Co (a firm)* [1993] RA 27, [1993] NLJR 511, CA. As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1124. Appeal against distress.

1124. Appeal against distress.

A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to a magistrates' court¹. The appeal may be instituted by making a complaint to a justice of the peace², and requesting the issue of a summons directed to the billing authority³ which levied or attempted to levy the distress to appear before the court to answer to the matter by which he is aggrieved⁴.

If the court is satisfied that a levy was irregular, it may order the goods distrained to be discharged if they are in the possession of the authority⁵. The court may also by order award compensation in respect of any goods distrained and sold of an amount equal to the amount which, in the opinion of the court, would be awarded by way of special damages in respect of the goods if proceedings were brought in trespass or otherwise in connection with the irregularity⁶. If the court is satisfied that an attempted levy was irregular, it may by order require the authority to desist from levying in the manner giving rise to the irregularity⁷. In any proceedings upon an appeal in connection with distress, a statement contained in a document constituting or forming part of a record compiled by the applicant authority or an authorised person⁸ is admissible as evidence of any fact stated in it of which direct oral evidence would be admissible⁹.

1 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 46(1); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 337. As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

2 The magistrates are under no duty to hear a complaint where alternative civil proceedings are more appropriate because of the factual and legal complexity of the matter: *R v Basildon Justices, ex p Holding & Barnes plc* [1994] RA 157, 158 JP 980.

3 As to billing authorities for the purposes of council tax see PARA 1116 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229.

4 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 46(2); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 337.

5 Ibid reg 46(3); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 337.

6 Ibid reg 46(3); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 337. Proceedings may be brought under reg 45(7) (see PARA 1122 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335); see reg 46(3). If, following irregular distress, the goods are still in the possession of the authority, the magistrates' court can only order discharge and may not award compensation: see *R v Epping Magistrates, ex p Howard and Leach* [1997] RA 258.

7 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 46(4); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 337.

8 For the meaning of 'authorised person' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 344.

9 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 53(4) (amended by SI 1996/1880); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 344.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1125. Committal to prison where distress is insufficient.

1125. Committal to prison where distress is insufficient.

Where a billing authority¹ has sought to levy an amount by distress², the debtor³ is an individual who has attained the age of 18 years, and the person making the distress reports to the authority that he was unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy the amount, the authority may apply to a magistrates' court for the issue of a warrant committing the debtor to prison⁴.

1 As to billing authorities for the purposes of council tax see PARA 1116 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 229.

2 See under the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 45 (as amended) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 335); see reg 47(1).

3 For the meaning of 'debtor' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 317.

4 Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 47(1); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 339.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/4. DISTRESS FOR COUNCIL TAX/1126. Further steps.

1126. Further steps.

Where a warrant of commitment¹ is issued against (or a term of imprisonment is fixed in the case of) a person² (because of the insufficiency of goods on which to levy distress³), no steps, or no further steps, may be taken⁴ by way of distress in relation to the relevant amount⁵. The 'relevant amount' is the aggregate of: (1) an amount equal to the appropriate amount⁶ or (as the case may be) so much of it as remains outstanding; and (2) a sum of an amount equal to the costs reasonably incurred by the applicant in respect of the application for committal⁷.

Steps by way of attachment of allowances, attachment of earnings, distress, commitment, bankruptcy, winding up or charging may not be taken against a person under a liability order⁸ while steps by way of another of those methods are being taken against him under it⁹. Subject to this, distress may be resorted to more than once¹⁰, and attachment of allowances, attachment of earnings, deductions under the Income Support Regulations¹¹ or distress may be resorted to in any order or alternately (or both)¹². Where a step is taken by way of distress for the recovery of an outstanding sum which is or forms part of an amount in respect of which a liability order has been made, any sum recovered thereby which is less than the aggregate of the amount outstanding and any charges arising¹³ is to be treated as discharging first the charges, the balance (if any) being applied towards the discharge of the outstanding sum¹⁴.

1 See PARA 1125 ante; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 339.

2 Ie under the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 47(3): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 339.

3 As to insufficient distress see PARA 1125 ante.

4 Ie under the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, Pt VI (regs 32-57) (as amended).

5 Ibid reg 52(1) (amended by SI 1993/773); and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 341.

6 For the meaning of 'appropriate amount' see PARA 1118 note 4 ante.

7 See the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, regs 47(4), 52(1) (as amended: see note 5 supra); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 339.

8 For the meaning of 'liability order' see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 312.

9 See the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 52(2)(a) (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 341.

10 See ibid reg 52(3)(a) (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 341.

11 The 'Income Support Regulations' means the Council Tax (Deductions from Income Support) Regulations 1993, SI 1993/494 (as amended) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 310); Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 32(1) (added by SI 1993/733). See also RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 341.

12 See the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, reg 52(3)(b); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 341.

13 Ie under ibid reg 45(2)(b), Sch 5 (as substituted and amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 312.

14 See ibid reg 52(4); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 341.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/5. DISTRESS FOR TAXES/1127. Taxes recoverable by distress.

5. DISTRESS FOR TAXES

1127. Taxes recoverable by distress.

Income tax¹, corporation tax² and capital gains tax³ which are assessed taxes under the care and management of the Commissioners for Her Majesty's Revenue and Customs⁴, are by statute made recoverable by distress⁵. Distress for this purpose is a statutory remedy more analogous to execution than to distress for rent, much of the law concerning which, accordingly, does not apply⁶. There are no statutory provisions allowing for the recovery by distress of stamp duties⁷ which are similarly under the care and management of the Commissioners⁸.

The Commissioners may by regulations⁹ make provision for: (1) authorising distress to be levied on the goods and chattels of any person refusing or neglecting to pay any amount of relevant tax¹⁰ due from him, or any amount recoverable as if it were relevant tax due from him¹¹; (2) the disposal of any goods or chattels on which distress is levied in pursuance of the regulations¹²; and (3) the imposition and recovery of costs, charges, expenses and fees in connection with anything done under the regulations¹³.

1 Income tax under the Income and Corporation Taxes Act 1988: see INCOME TAXATION. Remedies for recovery of this tax other than the remedy of distress are discussed in INCOME TAXATION.

2 See the Income and Corporation Taxes Act 1988; and INCOME TAXATION. Remedies for recovery of this tax other than the remedy of distress are discussed in INCOME TAXATION.

3 See the Taxation of Chargeable Gains Act 1992; and CAPITAL GAINS TAXATION. Remedies for the recovery of this tax other than the remedy of distress are discussed in CAPITAL GAINS TAXATION.

4 See the Taxes Management Act 1970 s 1(1) (substituted by the Commissioners for Revenue and Customs Act 2005 s 50(6)Sch 4 paras 11, 12); and INCOME TAXATION vol 23(1) (Reissue) PARA 31.

The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE; INCOME TAXATION. References in any enactment, instrument or other document to the Commissioners of Customs and Excise or to the Commissioners of Inland Revenue must now be taken to be references to the Commissioners for Her Majesty's Revenue and Customs, and references to the officers and other persons specified in s 6(2) or s 7(3) must now be taken to be references to an officer of Revenue and Customs: see the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (3), (7).

5 See the Taxes Management Act 1970 s 61 (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 1815.

6 See PARA 904 ante. Thus the Distress for Rent Rules 1988, SI 1988/2050 (as amended) (see PARA 994 et seq ante), made under the Law of Distress Amendment Act 1888 (see PARA 994 ante), do not apply; but apart from exceptions relating to the classes of goods privileged from distress and express statutory modification, the common law rules will, in general, apply. As to the common law and statutory rules under which certain goods are privileged from distress see PARA 930 et seq ante. See also *MacGregor v Clamp & Son*[1914] 1 KB 288, DC (implements of trade not privileged from distress for taxes).

7 As to stamp duties see generally STAMP DUTIES AND STAMP DUTY RESERVE TAX.

8 See the Stamp Duties Management Act 1891 ss 1, 27 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)); and STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1001.

9 See the Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1140 et seq.

10 'Relevant taxes', for these purposes, are any duty of customs or excise (other than vehicle excise duty), value added tax, insurance premium tax, landfill tax, aggregates levy, any agricultural levy of the European Community, and climate change levy: Finance Act 1997 s 51(5) (amended by the Finance Act 2001 s 27, Sch 5 paras 7, 14). As to distress in respect of amounts due relating to unlicensed vehicles see PARA 1134 note 6 post.

11 Finance Act 1997 s 51(1)(a). See further CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1139; VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 330.

12 Ibid s 51(1)(b).

13 Ibid s 51(1)(c).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/5. DISTRESS FOR TAXES/1128. Distraint in respect of income tax.

1128. Distraint in respect of income tax.

If a person neglects or refuses to pay¹ the sum charged upon him in respect of tax on demand² made by the collector of taxes³, the collector may distraint upon the goods and chattels⁴ of the person charged⁵.

A reasonable time must elapse between the delivery of the demand for payment and the distraint⁶, but no special provision is made by the Taxes Management Act 1970 as to the time within which the distraint must be made. The power may, however, be lawfully exercised after the expiration of the year in respect of which the tax is payable⁷; but it seems that after the collector's account for the year has been closed, the collector may not distraint without a special authorisation from the Commissioners for Her Majesty's Revenue and Customs⁸.

1 Non-payment after service of the demand note is evidence of refusal to pay: *Lumsden v Burnett* [1898] 2 QB 177 at 181-182, 185, CA.

2 For these purposes, 'tax', where neither income tax nor capital gains tax nor corporation tax nor development land tax (now abolished) is specified, means any of those taxes: Taxes Management Act 1970 s 118(1) (definition amended by the Development Land Tax Act 1976 s 41, Sch 8 para 32; and the Finance Act 1976 s 57(2)). As to the issue of demand notes see the Taxes Management Act 1970 s 60; and INCOME TAXATION vol 23 (Reissue) PARA 1710. As to delivery and service of documents see s 115 (as amended); and INCOME TAXATION vol 23(2) (Reissue) PARA 1797. Distraint following irregular service of a demand is unlawful and an action for wrongful distress will lie: see *Berry v Farrow* [1914] 1 KB 632. But issues as to the merits of an assessment must be determined on appeal to the Commissioners for Her Majesty's Revenue and Customs (formerly the Commissioners of Inland Revenue) and cannot be raised on proceedings for recovery: *IRC v Pearlberg* [1953] 1 All ER 388, [1953] 1 WLR 331, CA. As to the Commissioners for Her Majesty's Revenue and Customs see PARA 1127 note 4 ante.

3 In *R v Ford* (1835) 4 Nev & MKB 451, it was held that to justify a distress for taxes under 43 Geo 3 c 99 (Taxes) (1803) (repealed) the demand could be made by a person duly authorised by the collector; and that the amount due need not be specified in the demand note if it is understood by the taxpayer and not objected to by him.

4 As to the extent of distraint see PARA 1129 post.

5 Taxes Management Act 1970 s 61(1) (amended by Finance Act 1989 s 152(2)). This provision is applied with modifications to petroleum revenue tax: see the Oil Taxation Act 1975 s 1(5), Sch 2 para 1.

Generally the obligation to appoint collectors of taxes has been imposed on the Commissioners for Her Majesty's Revenue and Customs (formerly the Commissioners for Inland Revenue). Thus where a person has removed to another division or district leaving tax in arrear or unpaid, the collector for the division or district to which the person has removed may distraint as if the tax had been charged in that division or district: see *Rutherford v Lord Advocate* (1931) 16 TC 145 (recovery of tax in Scotland in respect of an assessment made in England).

In the event of insolvency following distraint under the Taxes Management Act 1970 s 61 (as amended), the distrained goods are not assets available for distribution to the taxpayer's creditors: *Re Modern Jet Support Centre Ltd* [2005] EWHC 1611 (Ch), [2005] 1 WLR 3880.

6 See *Gibbs v Stead* (1828) 8 B & C 528 (distraint held to be unlawful, where a collector distrained immediately after the demand and in the absence of the occupier of the premises).

7 See *Elliot v Yates* [1900] 2 QB 370, CA.

8 See *Elliot v Yates* [1900] 2 QB 370 at 375, CA, per Vaughan Williams LJ.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/5. DISTRESS FOR TAXES/1129. Extent of distraint.

1129. Extent of distraint.

As regards assessments in respect of lands and premises¹, the collector of taxes can distrain any goods found thereon, including the goods of a third party². In effect the tax is charged on the premises³. As regards other assessments made upon persons, the collector can only distrain the goods of the person charged⁴.

¹ The income tax and corporation tax chargeable under the Income and Corporation Taxes Act 1988 Schedule A (as substituted and amended): see s 15 (as amended), Pt II (ss 21A-42A) (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 45 et seq. Although tax under Schedule A (as substituted and amended) is charged on annual profits or gains arising in respect of rents and like receipts and not on or in respect of the land itself, it is considered that for the purposes of the Taxes Management Act 1970 s 61 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1815), such tax should probably be treated for these purposes as being charged in respect of lands, tenements and premises.

² *Juson v Dixon* (1813) 1 M & S 601 (house and window tax collector; goods of a third party available for distress); *MacGregor v Clamp & Son* [1914] 1 KB 288, DC (if the tax is not purely personal but is charged upon premises, it does not matter that the goods seized belong to a third person); *Reading v Chew* (1898) 78 LT 681 (an occupier took up occupation in April 1897, and his goods were distrained for tax due in respect of the previous year).

³ *Tenant v Smith* [1892] AC 150 at 154, 3 TC 158 at 163, HL, per Lord Halsbury LC; and see *Eastwood v McNab* [1914] 2 KB 361, CA (a lessee contracted to pay all taxes 'charged upon the premises'; the lessor had been assessed to and had paid inhabited house duty; it was held that he could recover the amount paid from the lessee).

⁴ *Earl of Shaftesbury v Russell* (1823) 1 B & C 666 (where tax is charged on a person, and not on premises, only the goods of a person charged can be seized by distraint); *Dolan v Joyce and Kirwan* [1928] IR 559 (arrear of tax due from a former occupier under Schedule B cannot be recovered from a subsequent occupier; the tax under Schedule B is imposed on the occupier).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/5. DISTRESS FOR TAXES/1130. Levying the distress.

1130. Levying the distress.

For the purpose of levying a distress a justice of the peace, on being satisfied by information on oath that there is reasonable ground for believing that a person is neglecting or refusing to pay a sum charged, may issue a warrant¹ in writing authorising a collector of taxes to break open, in the daytime, any house or premises, calling to his assistance any constable², who must, when so required, aid and assist the collector in the execution of the warrant and in levying the distress in the house or premises³.

A levy or warrant to break open must be executed by, or under the direction of, and in the presence of, the collector⁴.

1 The warrant must be in accordance with the form prescribed from time to time by the Commissioners for Her Majesty's Revenue and Customs (see the Taxes Management Act 1970 ss 113(3), 118(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7))), but if purporting to be made in pursuance of any provision of the Taxes Acts is not to be quashed or deemed to be void or voidable for want of form, or to be affected by reason of a mistake, defect or omission in it, provided it is in substance and effect in conformity with and according to the intent and meaning of the Taxes Acts, and if the person charged or property charged or intended to be charged or affected is designated in the warrant according to common intent and understanding (s 114(1)). As to the Commissioners for Her Majesty's Revenue and Customs see PARA 1127 note 4 ante. For the meaning of 'the Taxes Acts' see the Taxes Management Act 1970 s 118(1) (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 21.

2 This means any person holding the office of constable, not a member of a police force holding the rank of constable: see POLICE vol 36(1) (2007 Reissue) PARAS 101-105. As to the attestation of constables see POLICE vol 36(1) (2007 Reissue) PARA 103.

3 Taxes Management Act 1970 s 61(2) (amended by the Finance Act 1989 s 152(3)). See also *R v Clark* (1835) 4 Nev & MKB 671 (a collector may distrain without having his warrant with him and should only take the constable into a house where there is reason to fear a breach of the peace); cf *Foss v Racine* (1838) 4 M & W 419 (under the Land Tax Act 1797 s 17 (repealed), it was held that a collector could not break open unless a constable was present).

4 Taxes Management Act 1970 s 61(3).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/5. DISTRESS FOR TAXES/1131. Impounding, appraisalment and sale.

1131. Impounding, appraisalment and sale.

A distress levied by a collector of taxes must be kept for five days at the costs and charges of the person in default¹. If that person does not pay the sum due, together with the costs and charges then the distress must be appraised by one or more independent persons appointed by the collector, and sold by public auction by the collector for payment of the sum due and all costs and charges². Any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, is to be restored to the owner of the goods distrained³.

1 Taxes Management Act 1970 s 61(4) (amended by the Finance Act 1989 s 152(4)). As to impounding see PARA 1013 et seq ante.

2 Taxes Management Act 1970 s 61(5) (amended by the Finance Act 1989 ss 152(5), 187, Sch 17 Pt VIII). As to the appropriate scale of costs and charges see PARA 832 post.

3 Taxes Management Act 1970 s 61(5) (as amended: see note 2 supra). As to overplus see PARAS 1056-1057 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/5. DISTRESS FOR TAXES/1132. Scale of costs and charges.

1132. Scale of costs and charges.

The Treasury¹ may by regulations² make provision with respect to: (1) the fees chargeable on or in connection with the levying of distress; and (2) the costs and charges recoverable where distress has been levied³.

1 'The Treasury' means the Commissioners of Her Majesty's Treasury: Interpretation Act 1978 s 5, Sch 1. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 Any such regulation must be made by statutory instrument which is subject to annulment in pursuance of a resolution of the House of Commons: Taxes Management Act 1970 s 61(6) (added by the Finance Act 1989 s 152(6)). As to the regulations made see the Distraint by Collectors (Fees, Costs and Charges) Regulations 1994, SI 1994/236 (amended by SI 1995/2151); and the Distraint by Collectors (Fees, Costs and Charges) (Stamp Duty Penalties) Regulations 1999, SI 1999/3263.

3 Taxes Management Act 1970 s 61(6) (as added: see note 2 supra).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/5. DISTRESS FOR TAXES/1133. Priority of claim for tax.

1133. Priority of claim for tax.

If at any time at which goods or chattels belonging to any person in default¹ are liable to be taken by virtue of any execution or other process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever (except at the suit of the landlord for rent), the person in default is in arrears in respect of²:

- 35 (1) sums due from the person in default on account of deductions of income tax from taxable earnings³ paid during the period of 12 months next before the date of seizure being deductions which the person in default was liable to make under PAYE regulations⁴ less the amount of the repayments of income tax which he was liable to make during that period⁵; and
- 36 (2) sums due from the person in default in respect of deductions required to be made by him for that period⁶,

the goods or chattels may not be so taken unless, on demand made by the collector of taxes, the person at whose suit the execution or seizure is made, or to whom the assignment was made, pays or causes to be paid to the collector, before the sale or removal of the goods or chattels, all such sums as have fallen due at or before the date of the seizure⁷. Nevertheless where tax is claimed for more than one year, the person at whose instance the seizure has been made, may, on paying to the collector the tax which is due for one whole year, proceed in his seizure as if no tax had been claimed⁸. If these sums are not paid within 10 days of the date of the demand, the collector may distrain the goods and chattels notwithstanding the seizure or assignment, and may proceed to the sale thereof for the purpose of obtaining payment of the whole of those sums, and the reasonable costs and charges attending such distress and sale⁹. Every collector distraining in this manner is to be indemnified¹⁰.

A bill of sale is no protection in respect of personal chattels included in the bill of sale which, but for that bill of sale, would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates¹¹.

1 See PARA 1128 text and note 5 ante.

2 Taxes Management Act 1970 s 62(1) (amended by the Finance Act 1989 s 153(2)).

3 I.e. as defined by the Income Tax (Earnings and Pensions) Act 2003 s 10: see INCOME TAXATION.

4 I.e. regulations made under the Income Tax (Earnings and Pensions) Act 2003 ss 684, 685 (as amended): see INCOME TAXATION vol 23(1) (Reissue) PARAS 755-759.

5 Taxes Management Act 1970 s 62(1A)(a) (s 62(1A) added by the Finance Act 1989 s 153(3); and the Taxes Management Act 1970 s 62(1A)(a) amended by the Income Tax (Earnings and Pensions) Act 2003 s 722, Sch 6 paras 123, 132).

6 Taxes Management Act 1970 s 62(1A)(b) (s 62(1A) as added (see note 5 supra); and s 62(1A)(b) amended by the Finance Act 2004 s 76, Sch 12 para 4). The text refers to sums due under the Finance Act 2004 s 61 (deductions on account of tax for contract payments to sub-contractors in the construction industry): see INCOME TAXATION vol 23(1) (Reissue) PARA 810.

7 Taxes Management Act 1970 s 62(1) (as amended: see note 2 supra).

8 Ibid s 62(1) proviso.

9 Ibid s 62(2) (amended by the Finance Act 1989 s 153(4)).

10 Taxes Management Act 1970 s 62(2) (as amended: see note 9 supra).

11 Bills of Sale Act (1878) Amendment Act 1882 s 14; and see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1808.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1134. Jurisdiction.

6. DISTRESS UNDER THE

1134. Jurisdiction.

Where default is made in paying a sum adjudged to be paid by a conviction or order of a magistrates' court¹, the court may issue² a warrant of distress for the purpose of levying the sum or issue a warrant committing the defaulter to prison³. The expression 'sum adjudged to be paid by a conviction or order of a magistrates' court' includes a reference to any costs, damages or compensation adjudged to be paid by the conviction or order of which the amount is ascertained by the conviction or order⁴.

Payment of a sum adjudged to be paid to a magistrates' court on the forfeiture of a recognisance may be enforced as if the sum were a fine⁵. By statute certain further sums are to be treated for purposes of enforcement as if they were fines enforced by, or recognisances forfeited by, magistrates' courts⁶.

Where a magistrates' court is required to enforce payment of a fine imposed or a recognisance forfeited by a Crown Court or by a coroner⁷ or where a magistrates' court allows time for payment of a sum adjudged to be paid by a summary conviction, or directs that the sum be paid by instalments, or where the offender is absent⁸ when a sum is adjudged to be paid by a summary conviction, a warrant of distress or commitment is not to be issued until the designated officer for the court has served⁹ on the offender notice in writing stating the amount of the sum and, if it is to be paid by instalments, the amount of the instalments, the date on which the sum, or each of the instalments, is to be paid and the places and times at which payment may be made¹⁰.

A warrant of distress may not be issued for failure to pay a sum enforceable as a civil debt unless the defendant has been previously served¹¹ with a copy of the minute of the order, or the order was made in his presence and the warrant issued on that occasion¹². A 'sum enforceable as a civil debt' is any sum recoverable summarily as a civil debt¹³ which is adjudged to be paid by the order of a magistrates' court¹⁴ or any other sum expressed by any Act to be so enforceable¹⁵.

The restrictions upon the issue of a warrant of commitment in default of payment of a sum adjudged to be paid on conviction¹⁶ do not affect the power to enforce payment by distress, nor do the restrictions upon the issue of a warrant of commitment where default is made in paying a sum ordered to be paid by a magistrates' court maintenance order¹⁷ apply to the issue of a distress warrant. Where a magistrates' court has power to issue a warrant of distress¹⁸, the court, if it thinks it expedient to do so, may postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just¹⁹.

1 'Magistrates' court' means any justice or justices of the peace acting under any enactment or by virtue of his or their commission or under the common law: Magistrates' Courts Act 1980 s 148(1); and see generally MAGISTRATES. Except where the contrary is expressed, anything authorised or required by the Magistrates' Courts Act 1980 to be done by, to or before the magistrates' court by, to or before which any other thing was done, or is to be done, may be done by, to or before any magistrates' court acting in the same local justice area as that court: s 148(2) (amended by the Courts Act 2003 s 109(1), Sch 8 para 248).

2 As to the power to postpone issuing a warrant see the text to note 19 infra.

3 Magistrates' Courts Act 1980 s 76(1) (amended by the Criminal Justice Act 1982 s 78, Sch 16). This is expressed to be subject to the provisions of the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended;

prospectively amended), and s 132 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 31). As to the enforcement, otherwise than by distress, of judgments for payment of money made by magistrates' courts and committal see generally MAGISTRATES.

4 Ibid s 150(3). The expression does not include non-domestic rates or council tax: see PARAS 1104-1114, 1116-1126 ante. In the case of a fine imposed in respect of certain fishery offences a distress may be levied against a fishing boat and its gear and catch and any property of the person convicted for the purpose of levying the fine: see the Sea Fisheries Act 1968 s 12(1)(a) (as amended); note 19 infra; and PARA 1140 note 1 post. See further AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1017.

5 See the Magistrates' Courts Act 1980 s 120 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 157.

6 Such sums include: (1) fines imposed, or recognisances forfeited, by the Crown Court or by the criminal division of the Court of Appeal or by the House of Lords on appeal from that division (see the Powers of Criminal Courts (Sentencing) Act 2000 s 140 (as amended; prospectively amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 160); (2) fines imposed by coroners on jurors or witnesses and recognisances forfeited at inquests (see the Coroners Act 1988 s 10(1), (2) (as amended); the Criminal Justice Act 1988 s 67 (as amended); and CORONERS vol 9(2) (Reissue) PARAS 886, 915); (3) certain amounts payable by keepers of unlicensed vehicles (see the Vehicle Excise and Registration Act 1994 ss 30, 32(2), (3)(a); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 778); (4) and, upon the order of the judge, any fine imposed by a county court (see the County Courts Act 1984 s 129; and COURTS vol 10 (Reissue) PARA 704). As to the enforcement of decisions on appeals from magistrates' courts see PARA 1139 post.

7 As to the enforcement by magistrates' courts of fines imposed and recognisances forfeited by the Crown Court or by coroners see note 6 supra.

8 A party represented before a magistrates' court by a legal representative is deemed not to be absent: Magistrates' Courts Act 1980 s 122(1), (2) (s 122(1) amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25). 'Legal representative' means an authorised advocate or authorised litigator, as defined by the Courts and Legal Services Act 1990 s 119(1) (see LEGAL PROFESSIONS vol 65 (2008) PARAS 497-498); Magistrates' Courts Act 1980 s 150(1) (definition added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 25).

9 A notice under this rule is to be served by delivering it to the offender or by sending it to him by post in a letter addressed to him at his last known or usual place of abode: Magistrates' Courts Rules 1981, SI 1981/552, r 46(2).

10 Ibid r 46(1) (amended by SI 2001/610; SI 2003/1236; SI 2005/617).

11 A copy of the minute of the order is to be served by delivering it to the defendant or by sending it to him by post in a letter addressed to him at his last known or usual place of abode: see the Criminal Procedure Rules 2005, SI 2005/384, r 52.7(1).

12 See *ibid* r 52.7(2).

13 In addition to any sum expressed by or under a statute to be recoverable summarily as a civil debt, any sum, the payment of which may be ordered by a magistrates' court, is so recoverable, except a sum recoverable on complaint for a magistrates' court maintenance order, or a sum that may be adjudged to be paid by a summary conviction or by an order enforceable as if it were a summary conviction: Magistrates' Courts Act 1980 s 58(2) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 80). 'Magistrates' court maintenance order' means a maintenance order enforceable by a magistrates' court: Magistrates' Courts Act 1980 s 150(1) (definition added by the Family Law Reform Act 1987 Sch 2 para 88). 'Maintenance order' means any order specified in the Administration of Justice Act 1970 s 28(1), Sch 8 (as amended) and includes such an order which has been discharged, if any arrears are recoverable thereunder: Magistrates' Courts Act 1980 s 150(1) (definition added by the Family Law Reform Act 1987 Sch 2 para 88).

14 A magistrates' court has power to make an order on complaint for the payment of any money recoverable summarily as a civil debt: Magistrates' Courts Act 1980 s 58(1).

15 Ibid s 150(1). For an instance where an order of the Crown Court is enforceable summarily as a civil debt see the Administration of Justice Act 1970 s 41(2), Sch 9 para 16 (as substituted); and MAGISTRATES.

16 See the Magistrates Court Act 1980 s 82 (as amended; prospectively amended); and MAGISTRATES.

17 See *ibid* s 93(6) (as amended); and MAGISTRATES.

18 *Ie* under *ibid* Pt III (ss 75-96A) (as amended); see MAGISTRATES.

19 Ibid s 77(1). This provision applies to a warrant of distress issued under the Sea Fisheries Act 1968 s 12 (as amended): see s 12(3) (as amended); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1017. See note 4 supra.

There is no specific statutory power to suspend a warrant once it has been issued and old authorities on earlier statutes are inconclusive: see eg *Barons v Luscombe* (1835) 3 Ad & El 589; *Kendall v Wilkinson* (1855) 24 LJMC 89; *R v Paget* (1881) 8 QBD 151, DC. It is thought that the court has power to suspend in an appropriate case: cf the following custody cases *Re S (an infant)* [1958] 1 All ER 783, [1958] 1 WLR 391; *B (BPM) v B (MM)* [1969] P 103, sub nom *B (B) v B (M)* [1969] 1 All ER 891, DC; *Smith v Smith* (1971) 115 Sol Jo 444, DC (power of justices to grant stay of execution of orders as to custody pending appeal).

UPDATE

1134 Jurisdiction

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1135. Exercise of discretion.

1135. Exercise of discretion.

The exercise of the jurisdiction to issue a warrant for distress¹ must be exercised judicially². There is no requirement to hold an inquiry into the defaulter's means before issuing a warrant for distress³, but if an inquiry is made as to the defaulter's means, the justices may require affirmative evidence that the defendant has goods before issuing a warrant for distress⁴. If there is a reasonable likelihood that the defaulter has assets available to satisfy the sum he owes, the justices should proceed by way of warrant for distress rather than by way of a warrant for commitment⁵. Where justices do conduct a means inquiry and the defaulter is unrepresented, and the court has in mind the issue of a distress warrant, sufficient notice should be given to the defaulter that such a course is being considered so that the defaulter has a sufficient opportunity of making representations⁶.

1 See PARA 1134 ante; and MAGISTRATES.

2 *R v Hereford Magistrates' Court, ex p MacRae* (1998) 163 JP 433, DC.

3 *R v Hereford Magistrates' Court, ex p MacRae* (1998) 163 JP 433, DC.

4 *R v German* (1891) 56 JP 358, DC; *R v Mortimer* (1906) 70 JP 542, DC.

5 *R v Birmingham Justices, ex p Bennett* [1983] 1 WLR 114, (1982) 147 JP 279, DC.

6 *R v Guildford Justices, ex p Rich* [1997] 1 Cr App Rep (S) 49, (1996) 160 JP 645, DC.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1136. Commitment and distress.

1136. Commitment and distress.

Subject to certain restrictions¹, the magistrates' court² has power to issue a warrant committing the defaulter to prison either instead of issuing a warrant of distress or where it appears on the return to the warrant of distress that the money and goods of the defaulter are insufficient to satisfy the sum with the costs and charges of levying the sum³. In the case of a sum adjudged to be paid by an order, as distinct from a sum adjudged to be paid by a conviction or treated by any enactment as so adjudged to be paid, the power of committal is exercisable only in respect of default under a magistrates' court maintenance order⁴, an order for the payment of any one of certain taxes, contributions, premiums or liabilities⁵, or an order relating to the provision of funded services⁶. In certain cases the court may make an attachment of earnings order instead of issuing a warrant for distress or commitment⁷.

1 As to the restrictions see PARA 1134 note 3 ante.

2 For the meaning of 'magistrates' court' see PARA 1134 note 1 ante.

3 Magistrates Court Act 1980 s 76(2).

4 For the meaning of 'magistrates' court maintenance order' see PARA 1134 note 13 ante.

5 Ie specified in the Administration of Justice Act 1970 Sch 4 (as amended): see EXECUTION.

6 See the Magistrates Court Act 1980 s 92(1) (amended by the Access to Justice Act 1999 s 24, Sch 4 paras 15, 17). As to the provision of funded services see the Access to Justice Act 1999 s 17 (as amended); and LEGAL AID. A person may not be committed to prison in default of payment of a sum enforceable as a civil debt or for want of sufficient distress to satisfy such a sum except by an order made on complaint and on proof of means: see the Magistrates' Courts Act 1980 s 96(1); the Magistrates' Courts Rules 1981, SI 1981/552, r 58 (amended by SI 2005/617); and MAGISTRATES. As to restrictions on the power to impose imprisonment in default of payment of fines see the Magistrates' Courts Act 1980 s 82 (as amended; prospectively amended); and MAGISTRATES.

7 See the Attachment of Earnings Act 1971 ss 1(3), 3(4) (both as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2100; MAGISTRATES.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1137. Issue of warrant.

1137. Issue of warrant.

A distress warrant¹ may be issued by the magistrates' court² which convicted or made the order or in any magistrates' court acting in the same local justice area as the court which convicted or made the order³. The warrant must be signed by the justice issuing it or by the clerk of a magistrates' court where this is permitted⁴. A warrant issued by a justice of the peace does not cease to have effect by reason of his death or his ceasing to be a justice⁵.

Where a warrant is issued by a justice of the peace for any local justice area at a time when the office of the designated officer of that area is closed, the applicant for the warrant must within 72 hours serve upon the designated officer any information on which the warrant was issued⁶.

1 As to the general power to issue a warrant of distress where default is made in paying a sum adjudged to be paid by a magistrates' court see PARA 1134 ante.

2 For the meaning of 'magistrates' court' see PARA 1134 note 1 ante.

3 See the Magistrates' Courts Act 1980 s 148(2) (amended by the Courts Act 2003 s 109(1), Sch 8 para 248). For circumstances where a distress warrant may issue in respect of a conviction of another court see PARA 1134 note 6 ante. As to transfer of fine order see the Magistrates' Courts Act 1980 s 89 (as amended); and MAGISTRATES VOL 29(2) (Reissue) PARA 856. As to transfer of fine orders from Scotland or Northern Ireland see s 91 (as amended); and MAGISTRATES VOL 29(2) (Reissue) PARA 858. As to enforcement of magistrates' court maintenance orders see the Magistrates' Courts Rules 1981, SI 1981/552, r 59 (amended by SI 2001/610; SI 2005/617).

4 See the Criminal Procedure Rules 2005, SI 2005/384, r 5.3.

5 Magistrates' Courts Act 1980 s 124.

6 See the Magistrates' Courts Rules 1981, SI 1981/552, r 95A (added by SI 1993/1183; and amended by SI 2005/617).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1138. Form of warrant.

1138. Form of warrant.

A warrant of distress¹ issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order² must be directed to the constables of the police area³ in which the warrant is issued or to the civilian enforcement officers for the area in which they are employed, or to a person named in the warrant and must, subject to and in accordance with the provisions relating to the execution of distress warrants⁴, require them to levy the said sum by distress and sale of the goods⁵ belonging to the said person⁶.

The warrant must require the person charged with the execution to pay the sum to be levied to the designated officer for the court that issued the warrant⁷.

1 As to forms of distress warrant see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, r 2(1).

2 As to the power to issue a warrant for this purpose see PARA 1134 ante.

3 As to police areas see POLICE vol 36(1) (2007 Reissue) PARAS 136-138. The warrant, if directed to the constables of a police area, may, instead of being executed by any of those constables, be executed by any person under the direction of a constable: see the Magistrates' Courts Rules 1981, SI 1981/552, r 54(1)(c); and PARA 1141 post.

4 In accordance with the provisions of *ibid* r 54 (as amended): see the text and note 6 infra.

5 For descriptions of goods which are exempt see PARA 1144 post.

6 Magistrates' Courts Rules 1981, SI 1981/552, r 54(1)(b) (amended by SI 1990/1190). As to who may execute the warrant see PARA 1141 post.

7 Magistrates' Courts Rules 1981, SI 1981/552, r 54(3) (amended by SI 2005/617).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1139. Distress after appeal.

1139. Distress after appeal.

After the determination by the High Court of an appeal by case stated, or by the Crown Court of an appeal against a conviction or order of a magistrates' court, the decision of the appeal court is enforceable as if it were the decision of the magistrates' court against whose decision the appeal had been brought, and, accordingly, that magistrates' court may issue a distress warrant¹ to enforce the decision of the High Court² or of the Crown Court³.

1 As to the power to issue a distress warrant to enforce the decision of a magistrates' court see PARA 1134 ante.

2 Magistrates' Courts Act 1980 s 112.

3 Ibid s 110. The decision of the Crown Court has effect as if it had been made by the magistrates' court against whose decision the appeal was brought: s 110.

UPDATE

1139 Distress after appeal

TEXT AND NOTES--1980 Act s 112 amended: SI 2009/871.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1140. Effect of defect in warrant.

1140. Effect of defect in warrant.

A warrant of distress issued for the purpose of levying a sum adjudged to be paid by the conviction¹ or order of a magistrates' court², if it states that the sum has been so adjudged to be paid, will not be held void by reason of any defect in the warrant³; nor will a person acting under such a warrant be deemed to be a trespasser from the beginning by reason only of any irregularity in the execution of the warrant⁴. Special damages in respect of any loss caused by such a defect or irregularity are, however, recoverable⁵.

1 The provisions stated in the text apply to warrants of distress issued against fishing boats, their gear and catch and the property of persons convicted of certain fishery offences: see the Sea Fisheries Act 1968 s 12(3) (as amended); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1017. As to distress against fishing boats etc see PARA 1134 note 4 ante; and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1017.

2 As to the power to issue a distress warrant for such a purpose see PARA 1134 ante.

3 Magistrates' Courts Act 1980 s 78(1).

4 Ibid s 78(2). In connection with trespass ab initio see *Six Carpenters' Case* (1610) 8 Co Rep 146a; and see PARA 1076 et seq ante. As to trespass see TORT vol 45(2) (Reissue) PARA 659 et seq.

5 Magistrates' Courts Act 1980 s 78(3).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1141. Execution of warrant.

1141. Execution of warrant.

A warrant of distress issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order¹ which is directed to the constables of a police area² may be executed by any of the constables to whom it is directed, or by any person under the direction of a constable³. A warrant of distress issued by a justice of the peace for such a purpose may be executed anywhere in England and Wales by any person to whom it is directed⁴ or by any constable acting within his police area⁵.

A warrant of distress issued in England or Wales and indorsed in pursuance of the Summary Jurisdiction (Process) Act 1881 will be executed in Scotland as if it were a Scottish warrant of poinding and sale; and a Scottish warrant of poinding and sale similarly indorsed will be executed in England or Wales as if it were a warrant of distress issued in England or Wales⁶.

1 As to the power to issue a distress warrant for such a purpose see PARA 1134 ante.

2 As to police areas see POLICE vol 36(1) (2007 Reissue) PARAS 136-138.

3 Magistrates' Courts Rules 1981, SI 1981/552, r 54(1)(c).

4 As to the persons to whom a warrant may be directed see PARA 1138 ante.

5 See the Magistrates' Courts Act 1980 s 125(2).

6 Summary Jurisdiction (Process) Act 1881 s 5. The operation of this Act is extended so that its provisions apply as between England and the Isle of Man: see the Summary Jurisdiction Process (Isle of Man) Order 1928, SI 1928/377, art 1. Poinding is the taking of a debtor's moveables by way of execution.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1142. Time and manner of execution.

1142. Time and manner of execution.

The distress levied under any warrant issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order¹ must be sold within such period beginning not earlier than the sixth day after the making of the distress as may be specified in the warrant, or, if no period is specified in the warrant, within a period beginning on the sixth day and ending on the fourteenth day after the making of the distress². The sale must be by public auction³ or in such other manner as the person against whom the distress is levied may in writing allow⁴.

Subject to any direction to the contrary in the warrant, where the distress is levied on household goods, the goods may not, without the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale; and so much of the goods are to be impounded as is in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark⁵. The removal of goods so marked, or the removal or defacing of the mark, is punishable on summary conviction by a fine⁶. The person charged with the execution of the warrant is required to cause the distress to be sold⁷, and may deduct out of the amount realised all costs and charges incurred in effecting the sale⁸. If any person charged with the execution of the warrant wilfully retains from the proceeds of sale, or otherwise exacts, any greater costs and charges than those properly payable, or makes any improper charge, he is liable on summary conviction to a fine⁹.

1 As to the power to issue a distress warrant for this purpose see PARA 1134 ante. As to the persons who may be charged with the execution of a warrant see PARA 1138 ante.

2 Magistrates' Courts Rules 1981, SI 1981/552, r 54(5). With the consent in writing of the person against whom the distress is levied, the distress may be sold before the beginning of this period: r 54(5).

3 As to sale by auction see PARA 1055 ante; and AUCTION.

4 Magistrates' Courts Rules 1981 r 54(6). The distress must not be sold if the sum mentioned in the warrant and the charges of taking and keeping the distress have been paid: r 54(7).

5 Ibid r 54(8). As to impounding generally see PARA 1013 et seq ante. The expression 'household goods' is not defined; but wearing apparel and bedding of a person and his family are exempt: see PARA 1144 post. Goods seized by a constable under a distress warrant are in legal custody, and a landlord has no right to distrain or make a claim upon them; goods seized under a distress warrant issued by a magistrates' court may be removed without regard to any claim by the landlord for arrears of rent such as may be made under the Landlord and Tenant Act 1709 s 1 (as amended) (see PARA 1032 ante), in the case of goods seized in execution: see *Potts v Hickman* [1941] AC 212, [1940] 4 All ER 491, HL (a case of goods seized for rates); and PARA 1032 ante.

6 Magistrates' Courts Act 1980 s 78(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46; and by the Courts Act 2003 s 109(1), Sch 8 para 219(a)). The text refers to a fine not exceeding level 1 on the standard scale: see the Magistrates' Courts Act 1980 s 78(4) (as so amended). As to the standard scale see PARA 999 note 5 ante.

7 Where the distress warrant was issued to enforce a sum due under a forfeited recognisance, the magistrates' court that issued the warrant may, at any time before the actual sale, remit the whole or any part of the sum absolutely or on such conditions as the court thinks just: see *ibid* s 120(4). A magistrates' court must not, under this power, remit the whole or any part of a fine imposed, or sum due under a recognisance forfeited, by the Crown Court, the criminal division of the Court of Appeal, or the House of Lords on appeal from that division, without the consent of the Crown Court: Powers of Criminal Courts (Sentencing) Act 2000 s 140(5). As from a day to be appointed, the reference to the House of Lords is replaced by a reference to the Supreme Court: s 140(5) (prospectively amended by the Constitutional Reform Act s 40(4), Sch 9 para 69). At the date at which this volume states the law no such day had been appointed.

8 Magistrates' Courts Rules 1981, SI 1981/552, r 54(9) (amended by SI 2001/167). He must return to the owner the balance, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant: r 54(9).

9 Magistrates' Courts Act 1980 s 78(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). The text refers to a fine not exceeding level 1 on the standard scale: see the Magistrates' Courts Act 1980 s 78(5) (as so amended).

UPDATE

1142 Time and manner of execution

NOTE 7--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1143. Payment or tender to avoid distress.

1143. Payment or tender to avoid distress.

If any person pays or tenders to the person charged with its execution the sum mentioned in the distress warrant, or produces a receipt for that sum given by the designated officer for the court that issued the warrant, and also pays the amount of the costs and charges of the distress up to the time of the payment or tender or the production of the receipt, the person must not execute the warrant, or must cease to execute it¹.

¹ Magistrates' Courts Rules 1981, SI 1981/552, r 54(11) (amended by SI 2001/167; SI 2005/617). As to the persons who may be charged with the execution of a distress warrant issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order see PARA 1138 ante.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1144. Items exempt from distress.

1144. Items exempt from distress.

There must not be taken under the warrant of distress¹ the clothing or bedding of any person or his family or the tools, books, vehicles or other equipment which he personally needs to use in his employment, business or vocation².

Water fittings let for hire by a water undertaker and suitably marked as to indicate ownership³, gas meters connected to a service pipe and gas fittings in a consumer's premises which are owned by a gas transporter or gas supplier and marked or impressed with a sufficient mark or brand indicating the owner⁴, and electric lines, electrical plants lines or electricity meters belonging to or provided by an electricity distributor or electricity supplier which is marked or impressed with a sufficient mark or brand indicating an electricity supplier or electricity distributor as the owner or provider⁵, may not be subject to distress or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they may be⁶.

1 As to the power to levy such a distress see PARA 1134 ante.

2 Magistrates' Courts Rules 1981, SI 1981/552, r 54(4) (substituted by SI 1999/2765). The reference to 'person' does not, for these purposes, include a corporation: see the Magistrates' Courts Rules 1981, SI 1981/552, r 54(4) (as so substituted).

3 Water Industry Act 1991 s 179(4)(b). See further WATER AND WATERWAYS vol 101 (2009) PARA 464.

4 See the Gas Act 1986 s 8B, Sch 2B para 29(1)(a) (s 8B, Sch 2B both added by the Gas Act 1995 s 9, Sch 2; and the Gas Act 1986 Sch 2B para 29(1)(a) amended by the Utilities Act 2000 s 108, Sch 6 paras 1, 2(1)); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 868.

5 See the Electricity Act 1989 s 24, Sch 6 para 11 (s 24 amended by the Utilities Act 2000 s 51(1); and the Electricity Act 1989 Sch 6 substituted by the Utilities Act 2000 s 51(2), Sch 4); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1108.

6 See the text and notes 3-5 supra.

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1145. Seizure of money.

1145. Seizure of money.

A distress warrant issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order¹ authorises the person charged with its execution to take the money as well as the goods of the person against whom the distress is levied². Any money so taken is to be treated as if it were the proceeds of the sale of goods taken under the warrant³.

1 As to the power to issue such a warrant see PARA 1134 ante. As to the form of warrant and the persons to whom it may be directed see PARA 1138 ante.

2 Magistrates' Courts Rules 1981, SI 1981/552, r 54(2).

3 Ibid r 54(2).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1146. Account of costs and charges.

1146. Account of costs and charges.

The person charged with the execution of a warrant of distress issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order¹ must as soon as practicable send to the designated officer for the court which issued the warrant a written account of the costs and charges incurred in executing it². The designated officer must allow the person against whom the distress was levied to inspect the account within one month after the levy of the distress at any reasonable time to be appointed by the court³.

1 As to the power to issue such a warrant see PARA 1134 ante. As to the persons to whom it may be directed see PARA 1138 ante.

2 Magistrates' Courts Rules 1980, SI 1980/552, r 54(10) (amended by SI 2001/167; SI 2005/617).

3 Magistrates' Courts Rules 1980, SI 1980/552, r 54(10) (as amended: see note 2 supra).

Halsbury's Laws of England/DISTRESS (VOLUME 13 (2007 REISSUE))/6. DISTRESS UNDER THE MAGISTRATES' COURTS ACT 1980/1147. Return of insufficient distress.

1147. Return of insufficient distress.

Where the person to whom the duty of executing a distress warrant¹ is entrusted is unable, after diligent search, to find sufficient money and goods to satisfy the sum mentioned in the warrant, together with the costs and charges of levying that sum, he is required by a direction in the warrant to certify the same to the court that issued the warrant². The powers of a magistrates' court to enforce, otherwise than by means of distress, the payment of sums adjudged to be paid are dealt with elsewhere in this work³.

1 Is a distress warrant issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order. As to the power to issue such a warrant see PARA 1134 ante. As to the persons to whom it may be directed see PARA 1138 ante.

2 See also PARA 1138 note 1 ante.

3 See PARA 1136 ante; and MAGISTRATES .